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INSOLVENCY ACT

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No 18 of 2015

INSOLVENCY ACT

[*Date of Assent: 11th September, 2015*.]

[*Date of commencement: Parts I, III, V, First Schedule and Second Schedule:* ***30th November, 2015*** *Parts II, VI, VII, VIII, IX, X, XI, XII, Third Schedule and Fourth Schedule:* ***18th January, 2016****; Part XIII:* ***4th March, 2016****; Section 720:* ***27th June, 2016***.]

AN ACT of Parliament to amend and consolidate the law relating to the insolvency of natural persons and incorporated and unincorporated bodies; to provide for and to regulate the bankruptcy of natural persons; to provide alternative procedures to bankruptcy that will enable the affairs of insolvent natural persons to be managed for the benefit of their creditors; to provide for the liquidation of incorporated and unincorporated bodies (including ones that may be solvent); to provide as an alternative to liquidation procedures that will enable the affairs of such of those bodies as become insolvent to be administered for the benefit of their creditors; and to provide for related and incidental matters.

[Act No. 18 of 2015, L. N. 244 /2015, L. N. 1/2016, L. N. 38/2016, L. N. 119/2016, Act No. 13 of 2017, Act No. 12 of 2019.]

(Consolidation of the following amendment Ongoing: Act No. 24 of 2019.)

PART I — PRELIMINARY PROVISIONS

1. Short title and commencement

(1) This Act may be cited as the Insolvency Act, 2015.

(2) The provisions of this Act shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint and different dates may be appointed for different provisions.

(3) Notwithstanding sub section (2), any provision that has not been brought into force within nine months after the publication of this Act shall come into force on the expiry of that period.

[L. N. 244 /2015, L. N. 1/2016, L. N. 38/2016, L. N. 119/2016.]

2. Interpretation

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

“affairs” in relation to a natural person or company, includes a business carried on by the person or company and any dealings conducted in the course of the business;

"amount” means an amount of money;

“apply to" includes apply in relation to;

“associate”—

(a) in relation to a company, means—

(i) its holding company or its subsidiary;

(ii) a subsidiary of its holding company;

(iii) a holding company of its subsidiary;

(iv) a person who controls the company (whether alone or with the person's associates or with other associates of the company); or

(v) any other company in which a director of the company is also a director;

(vi) a natural person who is employed by the company;

(b) in relation to a partner of a partnership, means—

(i) any other partner of the partnership;

(ii) a member of the partner's family or of the family of another partner of the partnership;

(iii) a natural person who is employed by the partnership; or

(c) in relation to a natural person, means—

(i) a member of the person's family;

(ii) a company controlled directly or indirectly, by the person whether alone or with associates;

(iii) an associate of the person's associates; or

(iv) any person (including a company) who employs the person or by whom the person is employed;

"authorised insolvency practitioner" means a person who holds an authorisation granted under section 9;

"bank" means a bank to which the Banking Act applies;

"bankrupt" means a debtor who has been adjudged bankrupt under Part III and has not been discharged from bankruptcy;

"the Bankruptcy Act" means—

(a) the Bankruptcy Act repealed by this Act; and

(b) the rules made under that Act;

"bankruptcy trustee" in relation to a bankrupt or a bankruptcy, means the trustee of the bankrupt's estate;

"business" includes trade and profession;

"company" means a company or foreign company registered under the Companies Act, 2015 and includes—

(a) a building society within the meaning of the Building Societies Act (Cap. 489);

(b) a limited liability partnership within the meaning of the Limited Partnerships Act, 2011 (No. 42 of 2011); and

(c) a body (whether incorporated or not) of a class prescribed by the insolvency regulations for the purposes of this definition;

"conditional sale agreement" means an agreement for the sale of goods under which payment of the whole or a part of the purchase price is deferred and a security right in the goods is created or provided for in order to secure the payment of the whole or a part of the purchase price;

"connected with" in relation to a company, has the meaning given by subsection (4);

"control of" or "control over" in relation to documents or other property, includes having possession of, or custody over, the documents or property;

"correspondence" includes correspondence by electronic means;

"the Court" means the High Court, and if there is an insolvency division of that Court, means that division;

"creditor" includes a person entitled to enforce a final judgment or final order;

"credit purchase transaction" means a hire-purchase agreement, a conditional sale agreement, a chattel leasing agreement or a retention of title agreement;

"debt" means an obligation or liability of a person to pay money or money's worth to another person; and includes (except when the context otherwise provides)—

(a) a liability under a written law;

(b) a liability for a breach of trust;

(c) a liability under a contract or bailment or in tort; and

(d) a liability arising from an obligation to make restitution;

"debtor" means a person who owes a debt;

"document" means information recorded in any form; and in particular includes a summons, notice, order or other legal process and a register (whether in hard copy or electronic form);

"electronic form" in relation to a document or information, means the storage or keeping of the document or information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both;

"execution process" means any of the following:

(a) issuing or proceeding with any of the following orders or warrants under a judgment or order obtained against the debtor in any court in its civil jurisdictions—

(i) an order or warrant for the possession, seizure, or sale of any property;

(ii) an order of attachment;

(b) obtaining a garnishee order in favour of a judgment creditor under the Civil Procedure Rules;

(c) obtaining an order that a judgment creditor may sue a sub-debtor under the Civil Procedures Rules;

(d) having a charging order nisi made absolute under the Civil Procedure Rules;

(e) beginning or continuing proceedings in any court for the appointment of a receiver of property, except an application for the appointment of a person as interim trustee under section 36;

(f) exercising a power of re-entry under a lease, or a power terminating a lease;

(g) seizing or selling property by levying distress for rent;

"functions" includes duties and responsibilities;

"goods" includes all chattels personal other than things in action and money, and all emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

"hire-purchase agreement" means a hire-purchase agreement as defined in section 2(1) of the Hire Purchase Act;

"insolvency regulations" means regulations made under this Act and in force;

"judicial enforcement officer" means a bailiff or other officer of a court who is charged with carrying out a process involving the execution or enforcement of an order or judgement of the court;

"landlord"in relation to a letting of premises, includes any person to whom rent or other money is payable in respect of the occupation or use of the premises;

"liquidation application" in relation to a company, means an application to the Court for a liquidation order in respect of the company;

"liquidation order" in relation to a company, means an order of the Court for the liquidation of the company by the Court;

"member", in relation to a company, includes a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law;

"notice" means notice in writing;

"officer", in relation to a company, means the chief executive officer, or any director, manager or secretary, of the company;

"partnership" means a partnership within the meaning of the Partnership Act;

"person" includes a partnership, an unincorporated association, a corporation, a co-operative society or an organization, the successors of a partnership, association, corporation, society or organization, and heirs, executors, liquidators of the succession, administrators or other legal representative of a person;

"powers" includes rights and authorities;

"preferential creditor" means a person to whom a preferential debt is owed;

"preferential debts", in relation to a natural person or a company, means the debts listed in the Second Schedule;

"property" includes money, goods, choses in action, land and every description of property, whether real or personal, legal or equitable, and whether located in Kenya or elsewhere, and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent in, arising out of or incidental to property;

"prescribed bankruptcy level" has the meaning given by subsection (5);

"property" includes things in action;

"provable claim", in relation to a bankrupt, means a claim that is provable by a creditor in proceedings under Part III;

"purchaser" in relation to a credit purchase transaction, means the person to whom goods are disposed of under the transaction, and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights;

"records" means information stored in documents or in an electronic database or by electronic means;

"the Registrar" (except when used in reference to the Court) means the Registrar of Companies;

"register", registered" and "registration", in relation to a notice or other document required or permitted to be lodged with, or sent or notified to, the Registrar under this Act, means respectively register, registered and registration in the Register of Companies in relation to the company to which the notice or other document relates;

"relative", in relation to a person, means—

(a) the parents, spouse, child, brother, or sister of that person;

(b) the parents, child, brother or sister of the spouse of that person; or

(c) a nominee or trustee for any of the persons specified in paragraph (a) and (b);

"relevant court", in relation to a matter other than one that is specifically entrusted to the High Court by a provision of this Act, means the court exercising or having responsibility for exercising jurisdiction in respect of that matter;

"the repealed Companies Act" means —

(a) the Companies Act repealed by the Companies Act, 2015; and

(b) the rules or regulations made under that Act;

"retention of title agreement" means an agreement for the sale of goods to a company, being an agreement that does not constitute a charge on the goods; but under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company with respect to the goods or any property representing the goods as long as it has satisfied the applicable requirements for third-party effectiveness under the Movable Property Security Rights Act.

"secured creditor" means—

(a) a person holding a security on or against the property of the debtor or (any part of it) to secure a debt due or accruing due to the person from the debtor; or

(b) a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable;

"security" means any mortgage, charge, lien or other security;

"security agreement" means an agreement under which property becomes subject to a security for the payment of an obligation;

"service provider" means any entity or person who supplies fuel, water, electricity, telecommunications, or such other services as may be prescribed;

"shares" include stocks;

"special resolution" means a resolution of creditors passed in accordance with this Act;

"terms"includes conditions;

"transfer" includes conveyance, assignment and surrender;

"under administration", in relation to a company, has the meaning given by section 521;

"unsecured creditor" in relation to a natural person or a company, means a creditor of the person or company who is not a secured creditor;

"written" or "in writing" includes respectively "written in electronic form" and "in electronic form".

(2) For the purposes of the application of this Act to a debt, it does not matter—

(a) whether the debt is present or future;

(b) whether it is certain or contingent; or

(c) whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Act, a person is a member of the family of a natural person if the person is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of the person concerned and, in case of an adopted child, the child's adopted parents.

(4) For the purposes of this Act, a person is connected with a company if the person—

(a) is an officer of the company or an associate of such an officer; or

(b) is an associate of the company.

(5) For the purposes of this Act, the prescribed bankruptcy level is the amount for the time being specified in the Insolvency Regulations.

[Act No. 13 of 2017, Sch.]

3. Objects and application of this Act

(1) The objects of this Act are—

(a) to establish and provide for the operation of a framework for the efficient and equitable administration of the estates of insolvent natural persons and unincorporated entities comprising natural persons, and the assets of insolvent companies and other bodies corporate, that maintains a fair balance between the interests of those persons, entities, companies and bodies and those of their creditors;

(b) in the case of insolvent natural persons and unincorporated entities comprising natural persons, and insolvent companies and other bodies corporate whose financial position is redeemable—

(i) to enable those persons and entities to continue to operate as going concerns so that ultimately they may be able to meet their financial obligations to their creditors in full or at least to the satisfaction of those creditors; and

(ii) to achieve a better outcome for the creditors as a whole than would likely to be the case if those persons and entities were adjudged bankrupt;

(c) in the case of insolvent companies and other bodies corporate whose financial position is redeemable—

(i) to enable those companies and bodies to continue to operate as going concerns so that ultimately they may be able to meet their financial obligations to their creditors in full or at least to the satisfaction of those creditors; and

(ii) to achieve a better outcome for the creditors as a whole than would likely to be the case if those companies and bodies were liquidated; and

(d) in the case of insolvent natural persons and unincorporated entities comprising natural persons, and insolvent companies and other bodies corporate whose financial position is irredeemable—to provide an orderly system for adjudging those persons bankrupt and for the efficient and optimal administration and distribution of their estates for the benefit of their creditors;

(e) in the case of insolvent companies and other bodies corporate whose financial position is irredeemable—to provide an orderly system for liquidating the affairs of those companies and bodies and for the efficient and optimal administration and distribution of their assets for the benefit of their creditors.

(2) This Act applies to natural persons, partnerships, limited liability partnership, companies and other corporate bodies established by any written law.

PART II — INSOLVENCY PRACTITIONERS

4. Circumstances in which person acts as insolvency practitioner

(1) A person acts as an insolvency practitioner in relation to a natural person if the person acts—

(a) as the bankruptcy trustee or interim trustee in respect of the person's property or as permanent or interim trustee in the sequestration of the person's estate;

(b) as a trustee under a deed that is—

(i) a deed of composition made for the benefit of the person's creditors; or

(ii) a trust deed for the creditors of the person; or

(c) as supervisor of a voluntary arrangement approved under Division 1 of Part IV.

(2) A person acts as an insolvency practitioner in relation to a company if the person acts as—

(a) the liquidator, provisional liquidator, administrator of the company;

(b) a supervisor of a voluntary arrangement approved under Part VIII; or

(c) a supervisor of a voluntary arrangement approved under Part IX.

(3) A reference in this section to a natural person includes, except in so far as the context otherwise requires, a reference to a partnership other than a limited liability partnership.

5. Consequences of acting without authorisation

(1) A person who, not being the holder of an authorisation, purports to act as an insolvency practitioner in relation to a company or a natural person commits an offence and is on conviction liable to a fine not exceeding five million shillings.

(2) This section does not apply to the Official Receiver.

6. Qualifications for person to act as insolvency practitioners

(1) Subject to subsection (2) and (3), a person is qualified to act as an insolvency practitioner only if the person—

(a) satisfies the requirements of the insolvency regulations with respect to education, practical training and experience;

(b) is a member of a professional body recognised under section 7; and

(c) satisfies the requirements (if any) of the rules governing the body.

(2) A natural person is disqualified from being or acting as an insolvency practitioner if the person—

(a) has been adjudged bankrupt, or the person's estate has been sequestrated and, in either case, the person has not been discharged;

(b) is subject to a disqualification order made under the law relating to companies; or

(c) is unable to perform the functions of an insolvency practitioner because of physical or mental infirmity.

(3) A body corporate is not eligible to be an insolvency practitioner, but this subsection does not extend to an employee of a body corporate.

(4) A natural person who, during the two years immediately preceding the commencement of this Part, was carrying on any of the activities referred to in section 4(1) or (2) is, unless disqualified under subsection (2), taken to be qualified to be and to act as an insolvency practitioner on and after that commencement, but ceases to be so qualified unless the person has, within the twelve months after that commencement, complied with the requirements of subsection (1).

7. Duty of Cabinet Secretary to declare certain bodies to be recognised as professional bodies for the purposes of this Act

(1) The Cabinet Secretary shall, by notice published in the *Gazette*, declare one or more professional bodies to be recognised professional bodies for the purposes of this Act

(2) The Cabinet Secretary may declare a professional body to be a recognised professional body only if it—

(a) regulates the practice of a profession; and

(b) maintains and enforces rules authorising its members to act as insolvency practitioners to ensure that members—

(i) are fit and proper persons to act as insolvency practitioners; and

(ii) meet acceptable requirements relating to education practical training and experience.

(3) A reference to the members of a recognised professional body includes a reference to persons who are, whether members of that body or not, governed by its rules in the practice of the relevant profession.

(4) The Cabinet Secretary may revoke a notice made under subsection (1) if it appears to the Cabinet Secretary that the professional body no longer meets the requirements of subsection (2).

(5) A notice made by the Cabinet Secretary under this section takes effect from the date of the notice or such other date as is specified in it.

(6) The Cabinet Secretary may, in revoking a notice made under subsection (1), exempt a specified member, or a specified class of members, of the professional body concerned from the effect of the revocation and to authorise the member, or the members of that class, to continue acting as an insolvency practitioner or as insolvency practitioner for such period as the Cabinet Secretary determines and notifies in writing to the member or members concerned.

(7) In this section, "profession" means a profession involving carrying on any of the activities referred to in section 4(1) or (2).

8. Application to act as insolvency practitioner

(1) A person who wishes to act as an insolvency practitioner may apply to the Official Receiver for an authorisation to act as an insolvency practitioner for the purposes of this Act.

(2) The Official Receiver shall refuse an application under subsection (1) that—

(a) is not made in the manner prescribed by the insolvency regulations;

(b) does not contain or be accompanied by such information as the Official Receiver may reasonably require for purposes of determining the application; or

(c) does not comply with subsection (3); or

(d) is not accompanied by the fee so prescribed.

(3) The applicant shall include in, or attach to, the application evidence—

(a) that the applicant is qualified to act as an insolvency practitioner; and

(b) that the applicant—

(i) has a professional indemnity insurance policy or has provided security for the proper performance of the functions of an insolvency practitioner; and

(ii) that policy or security meets the requirements prescribed by the insolvency regulations with respect to acting as a practitioner; and

(c) that the applicant is a fit and proper person to act as an insolvency practitioner.

(4) The Official Receiver may direct that notice of the application be published in the *Gazette* or in such other publication as the Official Receiver specifies.

(5) Information to be provided to the Official Receiver under this section is, if the Official Receiver so requires, to be in such form or verified in such manner as the Official Receiver may specify.

(6) An application made under subsection (1) may be withdrawn at any time before it is granted or refused.

9. Grant or refusal of authorisation

(1) As soon as practicable after receiving an application made under section 8, the Official shall either grant or refuse the application.

(2) The Official Receiver shall grant an application made under section 8 if satisfied that—

(a) the application complies with the requirements of that section; and

(b) that the applicant is qualified to act as an insolvency practitioner and is a fit and proper person to act as such.

(3) The Official Receiver may not refuse an application for an authorisation without having given the applicant an opportunity to be heard.

(4) On granting an authorisation under this section, the Official Receiver shall notify the applicant in writing of the authorisation and specify the date on which the authorisation is to take effect.

(5) An authorisation granted under this section continues in force for such period, and subject to such reasonable conditions, as are specified in the authorisation.

10. Power of Official Receiver to revoke authorisation

(1) The Official Receiver may revoke an authorisation granted under subsection (1) if satisfied that the holder of the authorisation —

(a) is no longer qualified to act as an insolvency practitioner;

(b) is no longer a fit and proper person to act as an insolvency practitioner;

(c) has been found guilty of an offence under this Act, or of an offence under any other Act involving fraud, dishonesty or breach of trust;

(d) has contravened or failed to comply with, or is contravening or failing to comply with, a condition of the authorisation; or

(e) in making the application for an authorisation, has provided the Official Receiver with false or misleading information.

(2) An authorisation granted under this section may be revoked by the Official Receiver at the request, or with the consent, of the holder of the authorisation.

(3) The Official Receiver may not revoke an authorisation (otherwise than at the request or with the consent of its holder) without having given its holder an opportunity to be heard.

(4) A revocation of an authorisation does not take effect until the period within which an appeal within which the holder of the authorisation can appeal against the revocation has expired or, if within that period, the holder lodges such an appeal, until the appeal is finally determined or is withdrawn, whichever first occurs.

11. Right to appeal against decisions of Official Receiver

(1) A person whose application for an authorisation to act as an insolvency practitioner is refused may appeal to the Court against the refusal.

(2) A person whose authorisation to act as insolvency practitioner is revoked otherwise than at the person's request or with the person's consent may appeal to the Court against the refusal.

(3) Such an appeal may be entertained only if—

(a) it is lodged with the Court within thirty days after the decision of the Official Receiver refusing the application or revoking the authorisation is notified to the applicant or holder of the authorisation, or within such extended period as the Court may allow; and

(b) is in the form, and complies with any other requirements, prescribed by the insolvency regulations for the purposes of this section.

(4) The Official Receiver is entitled to be served with a copy of the appeal and to appear at the hearing of the appeal as respondent.

(5) On the hearing of an appeal lodged in accordance with this section, the Court shall, if it considers that the refusal of the appellant's application, or the revocation of the appellant's authorisation, was not warranted, make an order quashing the decision of the Official Receiver refusing the application, or revoking the authorisation, but otherwise, it shall make an order confirming the Official Receiver's decision.

(6) The Court may make such ancillary or consequential orders as it considers appropriate, including an order as to payment of costs of the appeal proceedings.

PART III — BANKRUPTCY OF NATURAL PERSONS

Division 1 — Bankruptcy: introductory provisions

12. Interpretation: Part III

In this Part—

"bankruptcy application" means an application for a debtor to be adjudged bankrupt;

"bankruptcy order," in relation to a debtor, means an order of the Court adjudging the debtor bankrupt;

"creditor's application" means a bankruptcy application made in accordance with section 17 by one or more creditors of a debtor;

"debtor" means a natural person who owes money to one or more creditors; and, if a trust, partnership or other unincorporated body owes money to a creditor, includes all of the trustees of the trust, all of the partners of the partnership and all of the members of the body;

"debtor's application" means a bankruptcy application made in accordance with section 32 by a debtor;

"statutory demand" means a demand for payment of a debt made as referred to in section 17(3)(a) or (4)(a).

13. Nature of bankruptcy

(1) Bankruptcy occurs when the Court makes an order in respect of a debtor adjudging the debtor bankrupt—

(a) on the application of one or more creditors of the debtor made in accordance with section 17; or

(b) on the application of the debtor made in accordance with section 32.

(2) If a person is adjudged bankrupt—

(a) the property of the person vests in the bankruptcy trustee or, if there is no bankruptcy trustee, the Official Receiver;

(b) the person becomes restricted as to the business activities that the person can undertake; and

(c) the Official Receiver is entitled to recover assets that the person has transferred within the two years immediately preceding the bankruptcy.

14. Alternatives to bankruptcy

A debtor who is insolvent may as an alternative to bankruptcy—

(a) enter into a voluntary arrangement in accordance with Division 1 of Part IV;

(b) make a proposal to creditors in accordance with Division 2 of Part IV;

(c) pay creditors in instalments under a summary instalment order under Division 3 of that Part; or

(d) enter the no asset procedure in accordance with Division 4 of that Part.

15. Who is entitled to make a bankruptcy application

(1) A bankruptcy application may be made to the Court in accordance with the provisions of this Part—

(a) by one of the person's creditors or jointly by two or more one of them;

(b) by the debtor; or

(c) by the supervisor of any person who is for the time being bound by a voluntary arrangement proposed by the debtor and approved under Division 1 of Part IV.

(2) On the hearing of such an application, the Court may, subject to and in accordance with the provisions of this Part, make a bankruptcy order.

(3) An application may be made by a person referred to in subsection (1)(a) or (b) only if the debtor—

(a) is domiciled in Kenya;

(b) is personally present in Kenya on the date on which the application is made; or

(c) at any time during the three years immediately preceding that date—

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

(ii) has carried on business in Kenya.

(4) In subsection (3)(c), the reference to a debtor carrying on business includes—

(a) the carrying on of a business by a firm or partnership of which the debtor is a member, and

(b) the carrying on of a business by an agent or manager for the debtor for such a firm or partnership.

16. Proceedings on a bankruptcy application

(1) A bankruptcy application may not be withdrawn without the approval of the Court.

(2) The Court has a general power to dismiss a bankruptcy application or to stay proceedings on such an application on the ground that the Court is of the opinion that a requirement of this Part or the insolvency regulations has not been complied with in a material respect.

(3) If the Court stays proceedings on a bankruptcy application, it may do so on such terms as it considers appropriate.

Division 2 – Bankruptcy applications by creditors

17. Creditor may apply for bankruptcy order in respect of debtor

(1) One or more creditors of a debtor may make an application to the Court for a bankruptcy order to be made in respect of the debtor in relation to a debt or debts owed by the debtor to the creditor or creditors.

(2) Such an application may be made in relation to a debt or debts owed by the debtor only if, at the time the application is made—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the prescribed bankruptcy level;

(b) the debt, or each of the debts, is for a liquidated amount payable to the applicant creditor, or one or more of the applicant creditors, either immediately or at some certain, future time, and is unsecured;

(c) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and

(d) there is no outstanding application to set aside a statutory demand in respect of the debt or any of the debts.

(3) For the purposes of subsection (2)(c), a debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a) the applicant creditor to whom the debt is owed has served on the debtor a demand requiring the debtor to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least twenty-one days have elapsed since the demand was served, and the demand has been neither complied with nor set aside in accordance with the insolvency regulations; or

(b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the applicant, or one or more of the applicants to whom the debt is owed, has been returned unsatisfied either wholly or in part.

(4) For the purposes of subsection (2)(c), a debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the applicant to whom it is owed has served on the debtor a demand requiring the debtor to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due;

(b) at least twenty-one days have elapsed since the demand was served; and

(c) the demand has been neither complied with nor set aside in accordance with the insolvency regulations.

(5) This section is subject to sections 18 to 20.

(6) An overstatement in a statutory demand of the amount owing by the debtor does not invalidate the demand unless—

(a) the debtor notifies the creditor that the debtor disputes the validity of the demand because it overstates the amount owing; and

(b) the debtor makes that notification within the period specified in the demand for the debtor to comply with it.

(7) A debtor complies with a demand that overstates the amount owing by—

(a) taking steps that would have complied 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 period specified in the demand for the debtor to comply.

18. When court can make bankruptcy order on application by secured creditor

(1) A debt that is the debt, or one of the debts, in respect of which a creditor's application is made need not be unsecured if either—

(a) the application contains a statement by the person having the right to enforce the security that the creditor is willing, in the event of a bankruptcy order being made, to give up the security for the benefit of all the bankrupt's creditors; or

(b) the application 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 application of the security for the secured part of the debt.

(2) In a case to which subsection (1)(b) applies, the secured and unsecured parts of the debt are to be treated for the purposes of sections 17, 19 and 20 as separate debts.

19. Expedited creditor's application

If a creditor's application is made wholly or partly in respect of a debt that is the subject of a statutory demand, the application may be made before the end of the twenty-one day period referred to in section 17 if—

(a) there is a serious possibility that the debtor's property, or the value of any of that property, will be significantly reduced during that period; and

(b) the application contains a statement to that effect.

20. Proceedings on creditor's application

(1) The Court may not make a bankruptcy order on a creditor's application unless it is satisfied that the debt, or one of the debts, in respect of which the application was made is either—

(a) a debt which, having been payable at the date of the application or having since become payable, has been neither paid nor secured or compounded for; or

(b) a debt that the debtor has no reasonable prospect of being able to pay when it falls due.

(2) If the application contains a statement of the kind referred to in section 19, the Court may not make a bankruptcy order until at least twenty-one days have elapsed since the service of the relevant statutory demand.

(3) The Court may dismiss the application if it is satisfied that the debtor is able to pay all of the debtor's debts or is satisfied—

(a) that the debtor has made an offer to secure or compound for a debt in respect of which the application is made;

(b) that the acceptance of that offer would have required the dismissal of the application; and

(c) that the offer has been unreasonably refused.

(4) In determining for the purposes of subsection (3) whether the debtor is able to pay all of the debtor's debts, the Court shall take into account the debtor's contingent and prospective liabilities.

(5) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, the Court shall presume that the prospect given by the information known to the creditor when the creditor entered into the transaction resulting in the debt was a reasonable prospect.

(6) Nothing in sections 17 to 19 prevents the Court from allowing a creditor's application to be amended by the omission of any creditor or debt and to be proceeded with as if action taken for the purposes of those sections had been taken only by or in relation to the remaining creditors or debts.

21. Creditor's execution process not to be issued or continued

(1) A creditor who makes an application for a bankruptcy order in respect of a debtor may not issue an execution process against the debtor in respect of the property of the debtor to recover a debt on which the application is based.

(2) If the creditor has already issued the execution process, the creditor may not continue it.

(3) The creditor may make an application to the relevant court for approval to issue or continue the execution process.

(4) On the hearing of an application made under subsection (3), the relevant court may make an order permitting the applicant to begin or continue the execution process but only if it is satisfied after considering all representations made to it that the interests of the other creditors will not be detrimentally affected.

(5) Any action taken in contravention of subsection (1) or (2) is void.

22. Power of relevant court to stay execution processes by other creditors or allow them on terms

(1) After a creditor's application has been made, the debtor or any creditor may apply to the relevant court for an order stopping the issue or continuance by any other creditor of an execution process against the debtor in respect of the property of the debtor.

(2) On the hearing of an application under subsection (1), the Court may make an order—

(a) stay the execution process on such terms as the Court considers appropriate; or

(b) allowing the execution process to continue on such terms as the Court considers appropriate.

23. Execution process issued by other court

(1) This section applies if an execution process has been issued by a court other than the High Court.

(2) If it is proved to the issuing court that an application for a bankruptcy order in respect of the debtor has been made to the High Court, that court may either—

(a) stay the execution process on such terms as it considers appropriate; or

(b) permit the execution process to continue on such terms as it considers appropriate.

24. No restriction on execution process if bankruptcy application withdrawn or dismissed

The restrictions in sections 21 to 23 on issuing or continuing an execution process do not apply if an application is withdrawn or dismissed.

25. When court may adjudge debtor bankrupt

(1) The Court may make a bankruptcy order in respect of the debtor if the creditor has complied with section 17.

(2) The Court may refuse to adjudge a debtor bankrupt if—

(a) the applicant creditor has not satisfied the requirements specified in section 17;

(b) the debtor is able to pay the debtor's debts; or

(c) it is just and equitable that the Court should not make a bankruptcy order.

26. When the Court may stay application

The Court may, at any time, stay an application by a creditor for bankruptcy on such terms, and for such period, as the Court considers appropriate.

27. Orders if more than one application

(1) If there is more than one bankruptcy application in respect of a debtor, and one application has been stayed by an order of the Court, the Court may, if it believes there is a good reason to do so, make a bankruptcy order in respect of the application that has not been stayed.

(2) On making a bankruptcy order under subsection (1), the Court shall dismiss the application that has been stayed on such terms as it considers appropriate.

28. Orders if there is more than one order

If an application made by a creditor for a bankruptcy order relates to more than one debtor, the Court may refuse to make such an order in respect of one or some of the debtors without affecting the application made in relation to the remaining debtor or debtors.

29. Power of the Court to make order staying bankruptcy application, etc

(1) This section applies if a debtor—

(a) has made a disposition of all, or substantially all, of the property of the debtor to a trustee for the benefit of the creditors of the debtor;

(b) has made a proposal under Division 1 of Part IV; or

(c) has applied for a summary instalment order under that Division.

(2) The debtor, the bankruptcy trustee or any creditor may apply for an order under this section.

(3) On the hearing of an application under this section, the Court may make any of the following orders—

(a) an order staying the bankruptcy application;

(b) an order staying any other bankruptcy application;

(c) an order as to costs;

(d) if it orders costs to be paid to the creditor who applied for the bankruptcy application—an order that the costs be paid out of the assets of the debtor.

(4) This section does not limit the powers of the Court under section 39.

30. Court may stay application while underlying debt is determined

(1) This section applies if a debtor appears in opposition to a creditor's application and the debtor claims that the debtor—

(a) does not owe a specified debt to the creditor; or

(b) owes a specified debt to the creditor, but the debt is less than the prescribed bankruptcy level.

(2) The Court may, instead of refusing the application, stay the application so that the issue of—

(a) whether the debt is owed; or

(b) how much of the debt is owed, can be resolved at trial.

(3) As a condition of staying the application, 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 cost of establishing the debt.

31. Court may allow one creditor to be substituted for another

(1) In the case of a creditor's application, the Court may substitute another creditor for the creditor making the application if—

(a) the applicant creditor has not proceeded with due diligence, or at the hearing of the application offers no evidence; and

(b) the debtor owes the other creditor two hundred and fifty thousand shillings or more.

Division 3 — Bankruptcy applications by debtors

32. When debtor may make application for bankruptcy order

(1) A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor’s debts.

(2) The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor’s financial position containing—

(a) such particulars of the debtor’s creditors and of the debtor’s debts and other liabilities and assets as may be prescribed by the insolvency regulations; and

(b) such other information as may be so prescribed.

(3) The Court may reject a statement of the debtor’s financial position if of the opinion that it is incorrect or incomplete.

(4) A debtor who makes an application under this section shall publish a notice of the application in—

(a) a newspaper circulating within the region in which the debtor ordinarily resides; and

(b) in such other publications (if any) as may be prescribed by the insolvency regulations for the purposes of this section.

(5) The Court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.

33. Appointment of insolvency practitioner by the Court

(1) Subject to section 34, on the hearing of a debtor's application, the Court may not make a bankruptcy order if it appears to the Court—

(a) that if a bankruptcy order were made the total amount of the applicant's debts, so far as unsecured, would be less than the small bankruptcies level;

(b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the prescribed minimum value;

(c) that, during the five years immediately preceding the debtor's application, the debtor has—

(i) neither been adjudged bankrupt; nor

(ii) made a composition with the debtor's creditors in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs; and

(d) that it would be appropriate to appoint an authorised insolvency practitioner to prepare a report under section 34.

(2) If, on the hearing of the application, it appears to the Court that it would be appropriate to make an appointment as referred to in subsection (1)(d), the Court shall appoint an authorised insolvency practitioner in relation to the debtor—

(a) to prepare a report under section 34; or

(b) subject to Division 1 of Part IV, to act in relation to any voluntary arrangement to which the report relates as supervisor for the purpose of supervising its implementation.

(3) In this section—

(a) "prescribed minimum value" means the amount for the time being specified in the insolvency regulations for the purposes of this section;

(b) "small bankruptcies level" means the amount for the time being so specified for the purposes of this section.

34. Action on report of insolvency practitioner

(1) The insolvency practitioner appointed under section 33 shall—

(a) inquire into the debtor's financial affairs; and

(b) within such period as the Court may specify—submit a report to the Court stating whether the debtor is willing to make a proposal for a voluntary arrangement in accordance with Division 1 of Part IV.

(2) If the insolvency practitioner proposes to state that the debtor is willing to make such a proposal, that practitioner shall also state—

(a) whether, in his or her opinion, a meeting of the debtor's creditors should be convened to consider the proposal; and

(b) if, in that practitioner's opinion such a meeting should be convened—the date on which, and time and place at which, the meeting should be held.

(3) On considering a report submitted under this subsection (1), the Court may—

(a) without any application, make an interim order under section 306, if it considers it appropriate to do so for the purposes of facilitating the consideration and implementation of the debtor's proposal; or

(b) if it considers it would be inappropriate to make such an order – make a bankruptcy order in respect of the applicant.

(4) An interim order made in accordance with subsection (3)(a) ceases 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 the debtor's creditors in accordance with the applicable provisions of Division 1 of Part IV.

(5) If the insolvency practitioner has proposed in the report that a meeting of the debtor's creditors should be convened, the insolvency practitioner shall, unless the Court otherwise directs, convene such a meeting for the time, date and place proposed in the report.

(6) Such a meeting is to be taken to have been convened under section 309 in which case subsections (2) and (3) of that section and sections 309 to 314 apply to the meeting.

35. Joint application can be made by two or more debtors

Two or more debtors, who are partners in a business partnership, may make a joint application under section 32.

Division 4 — Appointment of interim trustee in respect of debtor's property

36. Appointment of interim trustee of debtor's property on application of creditor

(1) After a creditor's application has been made, the creditor or any other creditor of the debtor may apply to the Court for an order for the appointment of an authorised insolvency practitioner as interim trustee in respect of all or a specified part of the debtor's property.

(2) The Court may make such an order at any time before a bankruptcy order is made in respect of the debtor.

(3) In making an order under subsection (1), the Court may authorise the interim trustee to do all or any of the following:

(a) take control of any property of the debtor;

(b) sell any perishable property or property of the debtor that is likely to fall rapidly in value;

(c) control the affairs or property of the debtor as directed by the Court.

(4) An order authorising the trustee to control a debtor's business may not extend beyond what, in the Court's opinion, is necessary to conserve the debtor's property.

(5) The Official Receiver and any authorised insolvency practitioner are suitably qualified persons for the purpose of subsection (1).

(6) In this section, **"debtor's business"** includes any business in which the debtor has a financial interest.

37. Additional orders after appointment of interim trustee

(1) After the appointment of an interim trustee under section 36, the Court may, on an application made under subsection (2), make additional orders under that section.

(2) An application for the purpose of subsection (1) made by a creditor or the interim trustee or, with the approval of the Court, by any other person.

38. Notice of appointment of interim trustee to be published

(1) As soon as practicable after the appointment of an interim trustee, the trustee shall publish a notice of the appointment—

(a) in one or more newspapers circulating in Kenya; and

(b) in such other publication as may be prescribed by the insolvency regulations for the purposes of this section.

(2) The appointment of the interim trustee does not take effect until subsection (1) has been complied with.

39. Execution process not to be issued after notice of appointment of trustee is published

(1) A creditor of the debtor may not issue an execution process under section 23 after notice of the appointment of the interim trustee has been published.

(2) A creditor may not continue an execution process already issued before notice of the appointment of the interim trustee has been published.

(3) A creditor or any other interested person 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 such terms as it considers appropriate.

(4) Any action taken in contravention of subsection (1) or (2) is void.

40. Effect of staying execution

If execution is stayed under section 39, sections 109, 110, 111, 112, 113, 114 and 116 apply as if the order staying execution were a bankruptcy order.

Division 5 — Adjudication of bankruptcy applications

41. Bankruptcy commences on making of bankruptcy order

A bankruptcy under this Act commences on the date and at the time when a bankruptcy order is made in respect of the debtor.

42. Date and time of bankruptcy order to be recorded

(1) On making a bankruptcy order, the Court shall record the date and time when the order was made.

(2) If the debtor is adjudged bankrupt on the application of the debtor, the Official Receiver shall record on the application the date and time when the debtor made the application.

43. Registrar of the Court to notify trustee of bankruptcy order

As soon as practicable after the Court has made a bankruptcy order in respect of a debtor, the Registrar of the Court shall forward a copy of the order to the Official Receiver.

44. Official Receiver to nominate bankruptcy trustee

(1) As soon as practicable after receiving a copy of a bankruptcy order, the Official Receiver shall nominate a qualified person to be bankruptcy trustee in respect of the debtor's property.

(2) In this subsection (1), "qualified person" means the Official Receiver or an authorised insolvency practitioner.

45. Presumption that act was done, or transaction was entered into or made, after bankruptcy

If a doubt arises as to whether an act was done, or a transaction entered into or made, before or after the time when a bankruptcy commenced, it is to be presumed, until the contrary is proved, that the act was done, or the transaction was entered into or made, after that time.

46. Bankruptcy order to be binding on all persons

A bankruptcy order becomes binding on the bankrupt and all other persons—

(a) on the expiry of the time within which an appeal may be lodged against the order; or

(b) if an appeal is lodged in respect of the order within that period and the Court later confirms the order or the appeal is later withdrawn—on the confirmation of the order or the withdrawal of the appeal,

and the order can no longer be questioned on the ground that it was invalid or that a prerequisite for making it did not exist.

47. Official Receiver to maintain public register of undischarged and discharged bankrupts

(1) The Official Receiver shall establish and maintain a public register of undischarged and discharged bankrupts.

(2) The Official Receiver shall maintain the register in accordance with Division 2 of Part XII.

Division 6 — What happens on and after bankruptcy commences

48. What happens or is to happen on and after bankruptcy commences

(1) When a bankruptcy order commences—

(a) all proceedings to recover the bankrupt's debts are stayed; and

(b) the property of the bankrupt (whether in or outside Kenya), and the powers that the bankrupt could have exercised in respect of that property for the bankrupt's own benefit, vest in the Official Receiver.

(2) Despite subsection (1), the Court may, on the application by a creditor or other person interested in the bankruptcy, allow proceedings that had already begun before the bankruptcy commenced to continue on such terms as the Court considers appropriate.

(3) Within thirty days after the date of the bankruptcy order, the Official Receiver shall, subject to subsection (4)—

(a) publish a notice advertising the order—

(i) once in the Gazette; and

(ii) once in a newspaper widely circulating in the area in which the bankrupt resides; or

(b) if the Court directs that the order be advertised in some other publication—publish such a notice in that other publication.

(4) If the bankrupt has appealed against the order or has applied for its annulment, the Court may order the Official Receiver not to advertise the bankruptcy order, but only if it is satisfied that there are compelling reasons for doing so.

(5) Subsection (1) is subject to section 106.

49. Official Receiver to serve notice on bankrupt requiring the bankrupt to lodge statement of the bankrupt's financial position

(1) Within thirty days after receiving notice of a bankruptcy order, the Official Receiver shall serve on the bankrupt a notice—

(a) stating that a bankruptcy order has been made in respect of the bankrupt;

(b) requiring the bankrupt to lodge with the Official Receiver a statement setting out the bankrupt's financial position; and

(c) specifying a deadline for lodging the statement with the Official Receiver.

(2) The Official Receiver shall serve the notice at the address of the bankrupt given in the bankruptcy application or at the bankrupt's address last known to the Official Receiver.

(3) This section does not apply if the bankrupt has already lodged a statement under section 32.

50. Bankrupt to lodge statement of financial position with bankruptcy trustee

(1) Within fourteen days after being served with the notice in accordance with section 49 (or within such extended period not exceeding sixty days as the Official Receiver may allow), the bankrupt shall lodge with the Official Receiver a statement of the bankrupt's financial position setting out—

(a) particulars of the bankrupt's assets;

(b) the bankrupt's debts and liabilities;

(c) the names, residences and occupations of the bankrupt's creditors;

(d) the securities held by the bankrupt's creditors;

(e) the dates when the securities were given; and

(f) such other information as may be prescribed by the insolvency regulations or as the bankruptcy trustee may reasonably require.

(2) At any time after lodging with the bankruptcy trustee a statement of the bankrupt's financial position, the bankrupt may lodge additional or amended statements or answers with the bankruptcy trustee.

(3) A bankrupt who fails to comply with a requirement of subsection (1) commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

(4) If, after being convicted of an offence under subsection (2), a bankrupt, without reasonable excuse, continues to fail to comply with the relevant requirement, the bankrupt commits a further offence on each day during which the failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

51. Creditors entitled to inspect and take copies of statement of bankrupt's financial position

(1) A person who in writing claims to be a creditor of the bankrupt is entitled, at all reasonable times (either personally or through an agent)—

(a) to inspect the statement of the bankrupt's financial position; and

(b) to take a copy it or of part of it.

(2) A person who falsely claims to be a creditor is in contempt of the Court.

52. Official Receiver to convene first meeting of creditors

(1) The Official Receiver shall, subject to subsection (5), convene the first meeting of the bankrupt's creditors within the prescribed period, unless the Official Receiver decides, in accordance with section 53, not to hold the meeting.

(2) The Official Receiver shall convene the meeting by giving notice of the time, date and place of the meeting to—

(a) the bankrupt;

(b) each creditor named in the statement of the bankrupt's financial position; and

(c) any other creditors known to the bankruptcy trustee.

a notice advertising the time, date and place of the meeting.

(3) The Official Receiver shall publish a notice advertising the time, date and place of the meeting—

(a) in one or more newspapers circulating generally in Kenya; and

(b) in such other publications as the Official Receiver considers appropriate.

(4) For the purpose of subsection (1), the prescribed period is—

(a) thirty days after the statement of the bankrupt's financial position is lodged with the Official Receiver; or

(b) if the bankrupt is late in lodging the statement or fails to lodge a statement at all—thirty days after the date on which the bankruptcy order was made.

(5) The Official Receiver may delay convening the first meeting of creditors for a period not exceeding fourteen days if the Official Receiver considers that there are special circumstances justifying the delay.

53. Circumstances in which Official Receiver may decide not to convene first meeting of creditors.

(1) The Official Receiver may decide not to convene a first creditors' meeting if the Official Receiver—

(a) has sent to each creditor named in the statement of the bankrupt's financial position, and to any other creditor known to the Official Receiver, a notice that complies with section 54; and

(b) has not, within fourteen days after sending the notice, received from a creditor a request to convene such a meeting.

(2) In deciding whether the meeting should or should not be convened, the Official Receiver shall have regard to—

(a) the bankrupt's assets and liabilities;

(b) the likely result of the bankruptcy; and

(c) any other relevant matters.

(3) Within seven days after deciding not to convene a first meeting of creditors, the Official Receiver shall send to each creditor named in the statement of the bankrupt's financial position, and to any other creditor known to the Official Receiver, a notice stating—

(a) the Official Receiver's view that a first creditors' meeting need not be convened;

(b) the reasons for not convening the meeting; and

(c) that the Official Receiver will convene a meeting only if the Official Receiver receives from a creditor, within fourteen days after sending the notice, a request to convene such a meeting.

54. Documents to be sent with notice of meeting

(1) The Official Receiver shall send the following documents with the notice of the first meeting of creditors:

(a) a summary of the bankrupt's statement of assets and liabilities;

(b) extracts from, or a summary of, the bankrupt's explanation of the causes of the bankruptcy; and

(c) any comments on the bankruptcy that the Official Receiver chooses to make.

(2) Subsection (1) does not apply if the Official Receiver has not received the statement of the bankrupt's financial position when the notice is sent.

(3) A failure in sending or receiving the documents in subsection (1) does not affect the validity of the proceedings at the meeting.

55. Power of creditors to requisition meeting

(1) If, in the case of a bankruptcy, the Official Receiver has not yet convened a first meeting of creditors, or has decided not to convene such a meeting, any creditor of the bankrupt may request the Official Receiver to convene such a meeting.

(2) As soon as practicable after receiving a request under subsection (1), the Official Receiver shall convene a first meeting of creditors if the request appears to the Official Receiver to be made with the concurrence of not less than one-quarter in value of the bankrupt's creditors (including the creditor making the request).

56. Execution process not to be begin or continue after bankruptcy order advertised

(1) A creditor may not begin or continue an execution process in respect of the bankrupt's property or person for the recovery of a debt provable in the bankruptcy, after the Official Receiver—

(a) has published an advertisement notifying the bankruptcy; or

(b) has given notice of the bankruptcy to the creditor.

(2) After the notice of the bankruptcy notice has been advertised, or after being given notice of the bankruptcy by the Official Receiver, a creditor may not seize or sell any property by means of distress for rent owed by the bankrupt.

(3) If the distress procedure has already begun, such a creditor may continue with the procedure only with the approval of the Court and subject to such conditions as the Court may specify.

57. Effect of bankrupt's death after bankruptcy order

If a bankrupt dies after being adjudged bankrupt, the bankruptcy continues in all respects as if the bankrupt were still alive.

58. Creditors' role at creditors' meetings

The role of the creditors in the bankruptcy is primarily—

(a) to attend meetings of the creditors;

(b) to submit proofs of the debts of the bankrupt; and

(c) to examine the bankrupt at those meetings.

Division 7— Appointment and functions of bankruptcy trustees

59. Power to appoint bankruptcy trustee

(1) The power to appoint a person as a bankruptcy trustee in respect of a bankrupt's estate, or to fill a vacancy in such an appointment, is exercisable—

(a) except as provided by paragraph (b) or (c) – by a creditors' meeting;

(b) under section 60 or 61 – by the Official Receiver;

(c) under section 62-by the Court.

(2) A power to appoint a person as bankruptcy trustee includes power to appoint two or more persons as joint bankruptcy trustees, but such an appointment is not effective unless it makes provision for the circumstances in which the trustees are required to act together and the circumstances in which one or more of them may act on behalf of the others.

(3) The appointment of a person as bankruptcy trustee takes effect only if the person accepts the appointment.

(4) The appointment of a person as a bankruptcy trustee takes effect at the time specified in the document by which the person is appointed.

(5) This section does not affect the provisions of this Part under which the Official Receiver is, in specified circumstances, to be, or required to act as, the bankruptcy trustee in respect of a bankrupt's estate.

60. Consequences of failure of creditors' meeting to appoint bankruptcy trustee

(1) If a meeting convened under section 52 or 55 is held but no one is appointed as bankruptcy trustee, the Official Receiver shall decide whether or not there is a need to make such an appointment.

(2) If the Official Receiver decides there is a need to make such an appointment, the Official Receiver shall make an appointment accordingly.

(3) If the Official Receiver decides that there is no need to make such an appointment, the Official Receiver shall notify the decision to the Court.

(4) On giving notice of the decision to the Court in accordance with subsection (3), the Official Receiver becomes bankruptcy trustee in respect of the bankrupt's estate.

61. Power of Official Receiver acting as bankruptcy trustee to appoint another person to act instead

(1) The Official Receiver may, at any time while acting as bankruptcy trustee in respect of a bankrupt's estate under a provision of this Division (other than section 62), appoint another qualified person to act as the bankruptcy trustee instead.

(2) Immediately after making such an appointment, the Official Receiver shall notify the appointment to the Court.

(3) The person appointed shall, as soon as practicable (and not later than seven days) after being appointed—

(a) give notice of the appointment to each of the bankrupt's creditors; or

(b) if, on application made to the Court, the Court so allows—advertise the appointment in accordance with the directions of the Court.

(4) In the notice or advertisement, the person appointed shall state—

(a) whether the person proposes to convene a general meeting of the bankrupt's creditors for the purpose of establishing a creditor's committee under section 100; and

(b) if the person does not propose to convene such a meeting—that the creditors are entitled under this Division to require one to be convened.

62. Special case in which the Court may appoint bankruptcy trustee

(1) If a bankruptcy order is made when there is a supervisor of a summary instalment order approved in relation to the bankrupt under Division 2 of Part IV, the Court may, if it considers it appropriate to do so on making the order, appoint the supervisor of the order as bankruptcy trustee in respect of the bankrupt's estate.

(2) If an appointment is made under subsection (1), the Official Receiver is not required to decide under section 60(1) whether or not to convene a creditors' meeting.

(3) Section 61(4) and (5) apply to a bankruptcy trustee appointed under this section.

63. Powers of bankruptcy trustee

(1) A bankruptcy trustee may—

(a) with the approval of the creditor's committee, exercise of any of the powers specified in Part 1 of the First Schedule; and

(b) without that approval, exercise any of the general powers specified in Part 2 of that Schedule.

(2) With the approval of the creditors' committee or the Court, a bankruptcy trustee may appoint the bankrupt—

(a) to superintend the management of the bankrupt's estate or any part of it;

(b) to carry on the bankrupt's business (if any) for the benefit of the bankrupt's creditors; or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the bankruptcy trustee may direct.

(3) An approval given for the purposes of subsection (1)(a) or (2) is required to be a specific one and to relate to a particular exercise of the relevant power.

(4) A person dealing with the bankruptcy trustee in good faith and for value is not required to ascertain whether an approval required by subsection (1)(a) or (2) has been given.

(5) If a bankruptcy trustee has done anything without the approval required by subsection (1)(a) or (2), the Court or the creditor's committee (if any) may, for

the purpose of enabling the bankruptcy trustee to meet the bankruptcy trustee's expenses out of the bankrupt's estate, ratify what that trustee has done.

(6) Part 3 of the First Schedule has effect with respect to the things that the bankruptcy trustee is able to do for the purposes of, or in connection with, the exercise of any of the bankruptcy trustee's powers under this Act.

(7) If, in exercising a power conferred by this Act, a bankruptcy trustee who is not the Official Receiver—

(a) disposes of property comprised in the bankrupt's estate to an associate of the bankrupt; or

(b) employs an advocate, the bankruptcy trustee shall, if there is a creditor's committee, give notice to the committee of that exercise of that power.

(8) A bankruptcy trustee may use his or her discretion in administering a bankrupt's property, but, in doing so, is required to have regard to the resolutions passed by the creditors at creditors' meetings.

64. Bankruptcy trustee not to sell bankrupt's property before first creditors' meeting

(1) A bankruptcy trustee may sell property of the bankrupt before the first meeting of creditors only if—

(a) it is perishable or is likely to rapidly diminish in value;

(b) in that trustee's opinion, its sale could be prejudiced by delay; or

(c) expenses would, in that trustee's opinion, be incurred by the delay and, before sale, the bankruptcy trustee has consulted the creditors.

(2) The bankruptcy trustee shall ensure that the proceeds of the sale of a bankrupt's property in accordance with subsection (1) are in every case invested in accordance with section 66.

65. Title of purchaser from bankruptcy trustee

The title of a purchaser of the bankrupt's property from a bankruptcy trustee under a document that is made in the exercise of the bankruptcy trustee's power of sale in the First Schedule may not be questioned except on account of fraud.

66. Bankruptcy trustee to bank money and power to invest surplus

(1) A bankruptcy trustee shall establish and maintain a bank account in respect of each bankrupt estate administered by that trustee and shall pay into the relevant account all money that that trustee receives in that capacity.

(2) If money held by a bankruptcy trustee in respect of a bankrupt's estate is not immediately required to be paid in connection with the administration of the estate, the bankruptcy trustee may invest the money in an investment of a kind prescribed by the insolvency regulations for the purposes of this section.

(3) A bankruptcy trustee who invests money in accordance with subsection (2) shall credit to the bankrupt's estate the interest, dividends or other money that accrues in respect of the investment.

67. Bankruptcy trustee may assign right to sue under this Act

(1) A bankruptcy trustee may, if the Court has first approved it, assign a right to sue that is conferred on the bankruptcy trustee by this Act.

(2) An application for such an approval may—

(a) be made only by the bankruptcy trustee or the person to whom it is proposed to assign the right to sue; and

(b) be opposed only by a person who is a defendant to the bankruptcy trustee's action, if already begun, or a proposed defendant.

68. Proceedings by bankruptcy trustee when bankrupt is partner in business partnership

(1) If a member of a business partnership is adjudged bankrupt, the Court may authorise the bankruptcy trustee to bring proceedings in the names of the bankruptcy trustee and the bankrupt's partner.

(2) The bankruptcy trustee shall serve notice of the application on the partner for authority to bring the proceedings, and the partner may oppose the application.

(3) The partner may apply to the Court for a direction that—

(a) the partner is to be paid the partner's proper share of the proceeds of the proceedings; or

(b) the partner is to be indemnified by the bankruptcy trustee against any costs incurred in the proceedings on the condition that the partner does not claim any benefit from them.

(4) Any purported release by the partner of the debt or demand to which the proceedings relate is void.

69. Discharge or transfer of indenture of apprenticeship or articles of agreement on bankruptcy of employer

(1) If a person is apprenticed or is an articled clerk to an employer who is adjudged bankrupt, either of them may give notice to the bankruptcy trustee or the Official Receiver requesting that the indenture of apprenticeship or articles of agreement be discharged.

(2) On receiving a notice under subsection (1), the bankruptcy trustee or Official Receiver shall discharge the indenture of apprenticeship or articles of agreement, but only if satisfied that it would be in the interests of the apprentice or clerk to do so.

(3) If money has been paid to the bankrupt by or on behalf of the apprentice or clerk as a fee, the bankruptcy trustee may, on the application of the apprentice or clerk, or of the agent of the apprentice or clerk, pay from the bankrupt's estate such amount as the trustee considers reasonable to or for the use of the apprentice or clerk.

(4) In deciding whether to make a payment under subsection (3), the bankruptcy trustee shall take into consideration—

(a) the amount paid by or on behalf of the apprentice;

(b) the time during which the apprentice or clerk served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and

(c) any other relevant circumstance.

(5) On the application of any apprentice or articled clerk to the bankrupt, or an agent of the apprentice or articled clerk, the bankruptcy trustee or Official Receiver may, instead of acting under subsection (2), transfer the indenture of apprenticeship or articles of agreement to some other person.

(6) Subsection (5) is subject to section 12 of the Industrial Training Act (Cap. 237).

(7) Any person dissatisfied with a decision of the bankruptcy trustee under subsection (3) may apply to the Court for an order quashing or varying the decision.

(8) On the hearing of an application made under subsection (7), the Court may make the order sought by the applicant or such other order as it considers appropriate.

70. Bankruptcy trustee may apply for directions by the Court

(1) A bankruptcy trustee may apply to the Court for directions on any question concerning the operation of this Part.

(2) A bankruptcy trustee who acts under a direction of the Court discharges the bankruptcy trustee's duty in relation to the matter for which the direction was sought, and it does not matter that the direction is later invalidated, overruled, or set aside or otherwise becomes ineffective.

(3) However, the bankruptcy trustee is not protected by subsection (2) if, in obtaining or following the Court's direction, the bankruptcy trustee was guilty of—

(a) fraud; or

(b) deliberate concealment or misrepresentation.

71. Application to the Court to reverse or modify bankruptcy trustee's decision

(1) A person (including the bankrupt or a creditor) whose interests, monetary or otherwise, are detrimentally affected by an act or decision to which this section applies may apply to the Court to reverse or modify the act or decision.

(2) This section applies to—

(a) an act or decision of the bankruptcy trustee; or

(b) a decision of the Court in carrying out an examination under section 170.

(3) The application may be entertained only if is made—

(a) within twenty-one days after the act or decision; or

(b) within such extended period as the Court allows.

(4) On the hearing on an application made under subsection (1), the Court shall—

(a) confirm the bankruptcy trustee's act or decision, with or without such modifications as it considers appropriate; or

(b) if it is of the opinion that the act or decision was unfair or unreasonable, quash it.

72. Bankruptcy trustee to keep proper accounting records

(1) A bankruptcy trustee shall—

(a) keep proper accounting records for each bankruptcy in the form and manner prescribed by the insolvency regulations; and

(b) if required by the Court to do so – verify those records by statutory declaration.

(2) A creditor or other person who has an interest in a particular bankruptcy is entitled to inspect the bankruptcy trustee's accounting records relating to the particular bankruptcy.

(3) After the end of three years from the discharge of a bankrupt, the bankruptcy trustee may dispose of the accounting records deposited with the bankruptcy trustee for the purposes of the bankruptcy by—

(a) delivering them to the bankrupt or the bankrupt's personal representative, if requested; or

(b) destroying or otherwise disposing of them.

73. Bankruptcy trustee's final statement of receipts and payments

(1) The bankruptcy trustee shall prepare a final statement of receipts and payments that complies with subsection (2)—

(a) as soon as practicable after the distribution of the final dividend has been determined; or

(b) when the whole of the bankrupt's property has been realised, if there are insufficient assets to pay all the proofs of debt.

(2) A final statement of receipts and payments complies with this subsection if it—

(a) shows in detail the receipts and payments in respect of the bankrupt's estate; and

(b) can be inspected without fee by any creditor or other person who has an interest in it.

(3) The bankruptcy trustee shall publish the final statement of receipts and payments in the prescribed form, and advertise in the prescribed manner that it has been published.

74. Audit of bankruptcy trustee's accounts

(1) If, in relation to a bankruptcy, the Official Receiver is not the bankruptcy trustee, the Official Receiver may from time to time audit—

(a) the bankruptcy trustee's accounting records for any particular bankruptcy;

(b) any statement of accounts and statement of financial position prepared by the bankruptcy trustee under section 73; and

(c) the account (if any) maintained by the bankruptcy trustee for the purposes of this Act.

(2) If, in relation to a bankruptcy, the Official Receiver is the bankruptcy trustee, the Auditor-General may from time to time audit the records, statements and account referred to in subsection (1)(a) to (b).

75. Removal of bankruptcy trustee and vacation of office

(1) Except as otherwise provided by this section, a bankruptcy trustee appointed in respect of a bankrupt's estate may be removed from office only by—

(a) an order of the Court; or

(b) a creditor's meeting convened specially for that purpose in accordance with the insolvency regulations.

(2) If the Official Receiver is the bankruptcy trustee, or the bankruptcy trustee is appointed by the Official Receiver or by the Court (otherwise than under section 62), a creditors meeting may be convened for the purpose of replacing the bankruptcy trustee, but only if—

(a) the Official Receiver or that trustee considers it appropriate to do so;

(b) the Court so directs; or

(c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

(3) A bankruptcy trustee who is not also the Official Receiver vacates office on ceasing to be authorised as an insolvency practitioner.

(4) A bankruptcy trustee who is not also the Official Receiver may resign office by giving to the Court not less than thirty days' notice of the resignation.

(5) A bankruptcy trustee vacates office—

(a) on giving notice to the Court that a final meeting has been held in accordance with section 253 and of the decision (if any) of that meeting; or

(b) if the relevant bankruptcy order is annulled – on the annulment of the order.

76. When Official Receiver is released from obligations as bankruptcy trustee

(1) If a person has been appointed by the Court to replace the Official Receiver on his or her ceasing to hold office as bankruptcy trustee in respect of a bankrupt's estate, the Official Receiver is released from such time as the Court orders.

(2) If a person has been appointed by a general meeting of a bankrupt's creditors to replace the Official Receiver on his or her ceasing to hold office as bankruptcy trustee in respect of the bankrupt's estate, the Official Receiver is released from office from the time at which the Official Receiver gives notice to the Court that another person has been appointed as a replacement.

(3) If the Official Receiver, while acting as bankruptcy trustee, gives notice to the Cabinet Secretary that the administration of the bankrupt's estate is for practical purposes complete, the Official Receiver's release takes effect from such time as the Cabinet Secretary determines in writing.

(4) On being released under this section, the Official Receiver is, from the time specified in accordance with this section, discharged from all liability both in respect of acts or omissions occurring in the course of, or in relation to, administering the estate of the bankrupt concerned.

77. When bankruptcy trustee, not being the Official Receiver, is released from obligations

(1) This section applies when a person other than the Official Receiver ceases hold office as a bankruptcy trustee.

(2) If the person has been removed from office by a meeting of the bankrupt's creditors that has not resolved against the person's release or who has died, the person is released from the time at which a notice is given to the Court in accordance with the insolvency regulations that the person has ceased to hold office.

(3) If the person has been removed from office—

(a) by a general meeting of the bankrupt's creditors that has resolved against the bankrupt's release;

(b) by the Court, the person is released from such time as the Official Receiver determines, on an application made by that person.

(4) If the person has vacated office under section 75(3), the person is released from such time as the Official Receiver determines, on an application made by that person.

(5) If the person has resigned office under section 75(4), the person is released from such time as may be determined in accordance with the insolvency regulations.

(6) If the person has vacated office under section 75(5)(a), the person is released—

(a) if the final meeting referred to in that subsection has resolved against that person's release—such time as the Official Receiver determines, on an application made by that person; but

(b) if that meeting has not so resolved—the time at which the person vacated office.

(7) When a bankruptcy order is annulled, the person is released from such time as the Court determines.

(8) On being released under this section, a bankruptcy trustee is, from the time specified in accordance with this section, discharged from all liability both in respect of acts or omissions occurring in the course of, or in relation to, administering the estate of the bankrupt concerned.

(9) Nothing in this section prevents the Court from exercising its powers under section 74 in relation to a person who has been released under this section.

78. Vacancy in office of bankruptcy trustee

(1) This section applies to a vacancy in the office of bankruptcy trustee that has arisen because—

(a) the appointment of a person as bankruptcy trustee has failed to take effect; or

(b) when such an appointment has taken effect, the person appointed has died, resigned or otherwise ceased to hold the office.

(2) When this section applies to a vacancy, the Official Receiver holds office as bankruptcy trustee until the vacancy is filled.

(3) The Official Receiver may at any time convene a creditors' meeting for the purpose of filling such a vacancy.

(4) If the Official Receiver has not convened, and does not propose to convene, a creditors' meeting for the purpose of filling such a vacancy, any creditor of the bankrupt may request the Official Receiver to convene such a meeting.

(5) If such a request appears to the Official Receiver to be made with the concurrence of not less than one-quarter in value of the bankrupt's creditors (including the creditor making the request), the Official Receiver shall convene the requested meeting.

(6) A reference in this section to a vacancy includes a case in which it is necessary, in relation to particular property that is or may be included in a bankrupt's estate, to revive the trusteeship of the estate after the holding of a final meeting convened under section 253 or after the Official Receiver has given notice under section 76(2) or 77(2).

79. General control of bankruptcy trustee by the Court

(1) If, in relation to the bankruptcy trustee in respect of a bankrupt's estate, a person (including the bankrupt or a creditor of the bankrupt) is dissatisfied with any act, omission to act or decision of that trustee, the person may apply to the Court for an order under subsection (2).

(2) On the hearing of such an application, the Court may—

(a) confirm, reverse or modify the act, omission or decision concerned; or

(b) give the bankruptcy trustee directions; or

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

(3) The Court may, on the application of a bankruptcy trustee, give directions in respect of the bankrupt's estate in relation to any particular matter arising under the bankruptcy.

80. Liability of bankruptcy trustee for misapplication of money, etc

(1) Any of the following persons make an application to the Court for an order under this section relating to a bankruptcy trustee's administration of a bankrupt's estate:

(a) the Official Receiver;

(b) the Attorney General;

(c) a creditor of the bankrupt;

(d) the bankrupt (whether or not there is, or is likely to be, a surplus available at the end of the bankruptcy).

(2) Approval of the Court is required for the making of such an application if it is to be made by the bankrupt or if it is to be made after the bankruptcy trustee has been released in accordance with section 77.

(3) If, on hearing an application made under subsection (1), the Court is satisfied that the bankruptcy trustee in respect of a bankrupt's estate has misapplied or retained, or become accountable for money or other property comprising the estate; the Court shall make either or both of the following orders:

(a) an order directing the bankruptcy trustee, for the benefit of the bankrupt's estate, to repay, restore or account for the relevant money or other property, together with interest at such rate as the Court considers appropriate;

(b) an order directing the bankruptcy trustee to be disqualified from acting as such for such period as may be specified in the order.

(4) If, on hearing an application made under subsection (1), the Court is satisfied that the bankrupt's estate has sustained a loss as a result of misfeasance or a breach of fiduciary or other duty by the bankruptcy trustee in performing that trustee's functions, the Court shall make either or both of the following orders:

Division 8 — Creditors' meetings and creditors' committee

81. Kinds of creditors' meetings

There are two kinds of creditors' meetings:

(a) the first meeting of creditors; and

(b) subsequent creditors' meetings.

82. Subsequent meetings of creditors

(1) The bankruptcy trustee may at any time convene a meeting of creditors after the first meeting of creditors.

(2) The bankruptcy trustee shall convene such a meeting if—

(a) requested to do so by a creditor of the bankrupt; and

(b) the request is made with the concurrence of not less than one-quarter in number and value of the creditors who have proved their debts.

(3) The bankruptcy trustee shall convene the meeting by giving notice of the time, date and place of the meeting to—

(a) the bankrupt; and

(b) each creditor named in the statement of the bankrupt's financial position; and

(c) any other creditors known to the bankruptcy trustee.

(4) The bankruptcy trustee shall advertise the time, date and place of the meeting in the manner prescribed by the insolvency regulations for the purpose of this section.

(5) Nothing in this section limits the general effect of section 63(5) or Part 3 of the First Schedule.

83. Meeting and resolution not defective for lack of notice

A meeting of creditors convened by notice to creditors, and a resolution passed at the meeting, is valid even if some creditors may not have received the notice, unless the Court orders otherwise.

84. Appointment of chairperson to conduct creditors' meetings

(1) The chairperson of a creditors' meeting is the bankruptcy trustee or a person appointed by the bankruptcy trustee to be the chairperson.

(2) However, if neither the bankruptcy trustee nor the person (if any) appointed by the bankruptcy trustee to be the chairperson attends the meeting, the creditors may appoint one of them to act as chairperson for the purpose of the meeting, but only if that person is entitled to vote at the meeting.

(3) A person appointed by the bankruptcy trustee or elected by the creditors to act as chairperson may administer any oath that the bankruptcy trustee could have administered if the bankruptcy trustee had attended the meeting.

85. Power of chairperson to adjourn creditors' meeting

The chairperson of a creditors' meeting may adjourn the meeting from time to time and place to place.

86. Bankruptcy trustee to report to creditors' meeting

If the bankruptcy trustee attends a creditors' meeting or an adjournment of the meeting, the bankruptcy trustee shall—

(a) report on the administration of the bankrupt's estate;

(b) give any creditor any further information that the creditor may properly require; and

(c) on being reasonably required to do so, produce for the meeting or its adjournment all documents in the bankruptcy trustee's possession that relate to the bankrupt's property.

87. Who can attend creditors' meeting

(1) A person may attend a creditors' meeting—

(a) by being physically present at the time, date and place appointed for the meeting; or

(b) if the bankruptcy trustee makes it available—by means of an audio or audio-visual link, so that all those participating in the meeting can hear and be heard by each other.

(2) A creditor may also attend—

(a) by voting by postal or electronic vote under section 94; or

(b) by proxy on any resolution to be put to the meeting.

88. Bankrupt may be required to attend creditors' meeting and be questioned

(1) The bankrupt shall, if required by the bankruptcy trustee, attend all creditors' meetings by being physically present or present by an audio or audio-visual link.

(2) The following persons may question the bankrupt about the bankrupt's property, conduct or dealings:

(a) the bankruptcy trustee;

(b) the chairperson of the meeting;

(c) a creditor or a representative of a creditor.

(3) The chairperson of the meeting may allow only questions that relate to the bankrupt's property, conduct or dealings.

(4) The questioning may be on oath.

(5) The bankrupt shall sign a statement of the bankrupt's evidence given under the questioning, if required to do so by the bankruptcy trustee or the chairperson of the meeting.

(6) A bankrupt who, without reasonable excuse, fails to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

89. Attendance at creditors' meeting by non-creditors

A person who is not a creditor of the bankrupt may attend a creditors' meeting with the consent of—

(a) the bankruptcy trustee; or

(b) the creditors attending the meeting, voting by ordinary resolution.

90. Minutes and record of creditors' meeting

(1) The bankruptcy trustee shall ensure that minutes are kept of each creditors' meeting.

(2) The minutes are invalid unless signed by the bankruptcy trustee or the chairperson of the meeting.

(3) The bankruptcy trustee may record the meeting, but only with the consent of each person attending the meeting.

91. Number of persons required for creditors' meeting to be valid

(1) A creditors' meeting is not valid unless at least the following persons attend:

(a) the bankruptcy trustee or a person who represents the bankruptcy trustee;

(b) a creditor or a person who represents a creditor.

(2) The meeting lapses if those persons do not attend, in which case the bankruptcy trustee may convene another creditors' meeting.

92. Who can represent creditors and bankrupt at creditors' meeting

(1) Any of the following persons may represent a creditor at a creditors' meeting:

(a) an advocate;

(b) a certified public accountant;

(c) a person who keeps the creditor's or bankrupt's accounting records;

(d) in the case of a creditor—a person who is the creditor's authorised agent under a power of attorney;

(e) a person who satisfies the bankruptcy trustee that the person represents the creditor or bankrupt:

(f) in the case of a partnership—a partner.

(2) If the bankrupt attends a creditors' meeting, any of the following persons may represent the bankrupt:

(a) an advocate;

(b) a certified public accountant;

(c) a person who keeps the creditor's or bankrupt's accounting records;

(d) a person who satisfies the bankruptcy trustee that the person represents the creditor or bankrupt;

(e) in the case of a partnership—a partner.

(3) In addition to the persons listed in subsection (1), a creditor may be represented—

(a) in the case of the State—by any officer of the appropriate government department or agency;

(b) in the case of a public body—by an officer of that body;

(c) in the case of a company—by a director, or its chief executive or secretary or by a person authorised in writing by one of those persons.

93. Passing of resolutions at creditors' meetings

(1) At a creditors' meeting—

(a) an ordinary resolution is passed if a majority in number and value of the creditors, or their proxies, who attend and who vote on the resolution vote in favour of it; and

(b) a special resolution is passed if three-quarters in number and value of the creditors or their proxies who attend and who vote on the resolution vote in favour of it.

(2) For the purposes only of deciding whether the requisite majority by value has voted in favour of a resolution, the following provisions apply:

(a) the bankruptcy trustee may admit or reject proofs of debt;

(b) the chairperson of the meeting may adjourn the meeting in order to admit or reject proofs of debt;

(c) a person whose debt has been admitted is a creditor.

(3) If a bankruptcy trustee or creditor alleges that a resolution of the creditors—

(a) conflicts with this or any other Act or any rule of law; or

(b) is unfair the bankruptcy trustee or creditor may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court finds that the allegation is substantiated, it may make such order, and give such directions, as it considers appropriate to address the conflict or unfairness.

(5) This section is subject to section 311.

94. What votes can be counted for passing of resolutions at creditors' meeting

(1) A creditor who is entitled to vote at a creditors' meeting may vote on a resolution to be put to the meeting—

(a) by postal vote; or

(b) by electronic vote, if the voting paper for the resolution allows it, in accordance with the procedure specified in the voting paper.

(2) A postal or electronic vote can be counted only if it reaches the bankruptcy trustee at least seventy-two hours before the meeting begins.

(3) A voting paper for each resolution to be put to a creditors' meeting is required to accompany the notice of the meeting, together with instructions for returning the voting paper or electronic vote (if allowed by the voting paper under subsection (1)(b)) to the bankruptcy trustee at least two working days before the meeting begins.

95. Who may vote at creditors' meeting

Creditors of the bankrupt who are entitled to vote, or their representatives, may vote at a creditors' meeting, but this rule is subject to sections 96 to 98.

96. When secured creditor may vote at creditors' meeting

A debt that is secured only entitles the creditor to vote at a creditors' meeting if the creditor has—

(a) surrendered the charge;

(b) valued the charge; or

(c) realised the charge.

97. When creditor under bill of exchange or promissory note may vote at creditors' meeting

(1) A debt on, or secured by, a current bill of exchange or promissory note entitles the creditor to vote only if the creditor is willing to take the following steps:

(a) to treat a qualifying liability as a charge in the creditor's hands;

(b) to estimate the value of the charge;

(c) to deduct the value of the charge from the creditor's claim for the purposes of voting (but not for the purposes of distribution under this Part);

(d) to show the bill or note to the bankruptcy trustee when the bankruptcy trustee requires it.

(2) In this section, "qualifying liability" means the liability to the creditor on the bill or note of every person who—

(a) is liable on the bill or note antecedently to the debtor; and

(b) is not a bankrupt.

98. Person disqualified from voting at creditor's meeting through preferential effect

(1) A person is not entitled to vote in favour of a resolution that would, if passed, directly or indirectly enable that person or any of the following persons to receive remuneration from the bankrupt's estate except as a creditor sharing rateably with the other creditors. Those persons are—

(a) that person's business partner, employer or employee;

(b) a creditor that that person represents; and

(c) a business partner, employer, or employee of a creditor whom that person represents.

(2) A vote cast in contravention (1) is invalid.

99. Entitlement of partner's creditor to prove debt at creditors' meeting

The bankruptcy of a partner of a firm who is indebted to a creditor jointly with one or more of the other partners entitles the creditor to prove the debt for the purpose of voting at any creditors' meeting, and to vote.

100. Creditors may appoint expert or committee to assist bankruptcy trustee

(1) A creditors' meeting may pass an ordinary resolution—

(a) appointing an expert to assist the bankruptcy trustee in the administration of the bankrupt's estate; and

(b) providing for the expert's remuneration out of that estate.

(2) A creditors' meeting may, by ordinary resolution, appoint a committee of persons to assist the bankruptcy trustee in the administration of the bankrupt's estate, but if it does so, the members of such a committee are entitled to receive remuneration from the bankrupt's estate in their capacity as members of the committee only if it has been approved by an order of the Court.

101. Creditors' right to inspect documents

A creditor who has lodged a creditor's claim, or an advocate or a certified public accountant who is acting for the creditor, is entitled at any reasonable time to inspect or take copies of—

(a) the bankrupt's accounting records;

(b) the bankrupt's answers to questions under section 88;

(c) the statement of the bankrupt's financial position;

(d) all proofs of debt; or

(e) the minutes of a creditors' meeting.

102. Committee of creditors may be established

(1) A general meeting of the creditors of a bankrupt may establish a creditors' committee to perform the functions conferred on it by or under this Part.

(2) A general meeting of the creditors of a bankrupt may not establish such a committee, or impose functions on such a committee, while the Official Receiver is the bankruptcy trustee in respect of the bankrupt's estate, except in relation to appointing a person to be bankruptcy trustee instead of the Official Receiver.

103. Exercise by Cabinet Secretary of functions of creditor's committee

(1) A creditors' committee may not perform its functions if at any time the Official Receiver is bankruptcy trustee in respect of the bankrupt's estate.

(2) If, in the case of a bankruptcy, no creditors' committee exists and the bankruptcy trustee in respect of the bankrupt's estate is a person other than the Official Receiver, the functions of the creditors committee are to be performed by the Cabinet Secretary, except in so far as the insolvency regulations otherwise provide.

Division 9 — Bankrupt's property after bankruptcy

104. Status of property acquired during bankruptcy

(1) Until the bankrupt is discharged—

(a) all property (whether in or outside Kenya) that the bankrupt acquires or that passes to the bankrupt vests in the bankruptcy trustee without that trustee having to intervene or take any other step in relation to the property, and any rights of the bankrupt in the property are extinguished; and

(b) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's own benefit vest in the bankruptcy trustee.

(2) This section is subject to sections 106 and 124.

(3) This section does not apply to property that is vested in the bankrupt under an order made under section 120(3).

105. Property vests in replacement bankruptcy trustee

If the bankruptcy trustee is replaced, the property and powers vested in the former bankruptcy trustee under this Act vest in the replacement bankruptcy trustee.

106. Property held in trust by bankrupt

Property held by the bankrupt in trust for another person vests in the bankruptcy trustee, who shall assume control of the property and deal with it for the benefit of the beneficiaries of the trust.

107. Court may order money due to bankrupt to be assigned to bankruptcy trustee

(1) If a bankruptcy trustee considers it necessary to do so, the bankruptcy trustee may apply to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may order that any money due to the bankrupt, or any money to become due or payable to the bankrupt, is assigned or charged to, or in favour of, the bankruptcy trustee.

(3) The assignment or charge is a discharge to the person who pays the bankruptcy trustee.

108. Certain payments to be applied in accordance with the Second Schedule

The bankruptcy trustee shall apply the following payments in accordance with the Second Schedule (Priority of payments to preferential creditors)—

(a) any amount paid by the bankrupt under section 150; and

(b) any amount paid to the bankruptcy trustee under an order made under section 107.

109. When execution creditor may retain execution proceeds

(1) This section applies if a bankruptcy order has been made in respect of a debtor but, before the order was made, a creditor has—

(a) issued execution against the debtor's property; or

(b) attached a debt payable by the debtor.

(2) If this section applies, the creditor may retain the benefit of the execution or attachment (including the proceeds) only if the creditor completed the execution or attachment—

(a) before the bankruptcy order was made; and

(b) before the creditor had notice that an application for such an order had been lodged.

(3) The creditor may retain as against the bankruptcy trustee a payment made by the bankrupt in the course of the execution or attachment to avoid the execution or attachment as if—

(a) the payment was the proceeds of the execution or attachment; and

(b) the execution or attachment was completed when the payment was made.

(4) The right of a creditor under this section to retain the benefit of an execution or attachment is subject to Division 19.

110. Effect of notice to judicial enforcement officer of bankruptcy

(1) This section applies if a judicial enforcement officer who has taken the property of a debtor in execution is served with notice of the debtor's bankruptcy—

(a) before the property is sold; or

(b) before the execution is completed by the receipt or recovery of the full amount derived from the execution.

(2) If required to do so by the bankruptcy trustee, the judicial enforcement officer shall deliver to the bankruptcy trustee all money and goods seized or received in satisfaction or part satisfaction of the execution.

(3) The costs of the execution are a first charge on the money or goods delivered to the bankruptcy trustee, who may sell all or any of the goods to satisfy the charge.

111. Judicial enforcement officer to retain proceeds of execution for fourteen days after sale

(1) This section applies if, under execution of a judgment for an amount exceeding ten thousand shillings, the judicial enforcement officer—

(a) sells property of the debtor; or

(b) is paid money in order to avoid a sale.

(2) The judicial enforcement officer is entitled to—

(a) deduct the costs of the execution from the proceeds of sale or the money paid; and

(b) retain the balance for the requisite period, to be applied in accordance with subsection (3) or (4).

(3) If the judicial enforcement officer is served with notice within the requisite period that a debtor's application has been made, the judicial enforcement officer

shall pay the balance to the bankruptcy trustee, who is entitled to retain it as against the execution creditor.

(4) If the judicial enforcement officer is served with notice within the requisite period that a creditor's application has been made in respect of a debtor—

(a) the judicial enforcement officer shall retain the balance until the application, and any other application of which notice is served on the judicial enforcement officer pending disposal of the first application, has been disposed of; and

(b) the judicial enforcement officer shall—

(i) if a bankruptcy order is made in respect of the debtor—pay the balance to the bankruptcy trustee; or

(ii) if such an order is not made—pay the balance to the execution creditor, who is entitled to retain it as against the bankruptcy trustee (subject to section 113).

(5) If the judicial enforcement officer is not served with notice within the requisite period that a bankruptcy application has been made in respect of the debtor, that officer shall pay the balance to the execution creditor, who is entitled to retain it as against the bankruptcy trustee.

(6) The requisite period for the purpose of this section is fourteen days from the date of the sale or payment to avoid sale.

112. Purchaser under sale by judicial enforcement officer acquires good title

On the sale by the judicial enforcement officer of a debtor's property on which execution has been levied, the purchaser, if acting in good faith, acquires a good title to the property as against the bankruptcy trustee.

113. Court may set aside rights conferred on bankruptcy trustee

(1) An execution creditor may make an application to the Court for an order setting aside the rights of the bankruptcy trustee under section 110 or 111.

(2) On the hearing of an application made under subsection (1), the Court may make an order setting aside those rights in favour of the execution creditor to the extent and on such terms (if any) as the Court considers appropriate.

(3) The Court may not make an order under subsection (2) unless satisfied that the bankruptcy trustee has been served with a copy of the application.

(4) The bankruptcy trustee is entitled to appear as respondent at the hearing of the application.

114. Transaction in good faith and for value after bankruptcy

(1) This section applies to a transaction between a person and the bankrupt in relation to property that the bankrupt has acquired, or that has passed to the bankrupt, after the bankruptcy has commenced.

(2) The transaction is valid as against the bankruptcy trustee if—

(a) the person concerned deals with the bankrupt in good faith and for value; and

(b) the transaction is completed without an intervention by the bankruptcy trustee.

(3) If the person concerned is a bank of which the bankrupt is a client, a transaction by that person dealing with the bankrupt for value includes—

(a) the receipt by that person of any money, charge, or negotiable instrument from the bankrupt or by the bankrupt's order or direction;

(b) a payment by that person to the bankrupt or by the bankrupt's order or direction; and

(c) the delivery by that person of a charge or negotiable instrument to the bankrupt or by the bankrupt's order or direction.

(4) A payment of money or delivery of property by a legal personal representative to, or by the direction of, the bankrupt is a transaction for value.

115. Executions and attachments in good faith

If a bankrupt acquires property, or property passes to a bankrupt, after the bankruptcy has commenced, an execution or attachment against the property is valid as against the bankruptcy trustee if it—

(a) is made in good faith;

(b) is made in respect of a debt or liability incurred by the bankrupt after the bankruptcy commenced; and

(c) is completed before an intervention by the bankruptcy trustee.

116. When execution or attachment completed for purposes of sections 109 and 115

For the purposes of sections 109 and 115—

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

117. Bankruptcy trustee's interest in property passes to transferee

If the bankruptcy trustee's interest in property is acquired by or passes to a bankrupt after bankruptcy has commenced—

(a) the bankruptcy trustee's interest in the property ends; and

(b) that interest passes in the manner, and to the extent necessary, to give effect to a transaction, execution, or attachment to which section 114 or 115 applies.

Division 10 — Disclaimers of bankrupt's property

118. Bankruptcy trustee may disclaim onerous property

(1) The bankruptcy trustee may disclaim onerous property, subject to section 121.

(2) Subsection (1) applies even if the bankruptcy trustee has taken possession of the property, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(3) Within fourteen days after the disclaimer, the bankruptcy trustee shall send a notice of the disclaimer to every person whose rights are, to the bankruptcy trustee's knowledge, affected by it.

(4) Property is onerous for the purposes of this section if it is or comprises—

(a) an unprofitable contract;

(b) property of the bankrupt that is unsaleable, or not readily saleable, or

that may give rise to a liability to pay money or perform an onerous act; or

(c) a litigation right that, in the opinion of the bankruptcy trustee, has no reasonable prospect of success or cannot reasonably be funded from the assets of the bankrupt's estate.

119. Effect of disclaimer

A disclaimer by the bankruptcy trustee—

(a) terminates, on and from the date of the disclaimer, the rights, interests, and liabilities of the bankruptcy trustee and the bankrupt in relation to the property disclaimed; and

(b) does not affect the rights, interests, or liabilities of any other person, except in so far as is necessary to release the bankruptcy trustee or the bankrupt from a liability.

120. Position of person who suffers loss as result of disclaimer

(1) A person who sustains loss or damage as a result of disclaimer by the bankruptcy trustee may—

(a) claim as a creditor in the bankruptcy for the amount of the loss or damage, taking account of the effect of an order made by the Court under paragraph (b); or

(b) apply to the Court for an order that the disclaimed property be delivered to, or vested in, the person.

(2) The bankrupt may also apply to the Court for an order that the disclaimed property be delivered to, or vested in, the bankrupt.

(3) On the hearing of an application made under subsection (1)(b) or (2), the Court may make the order sought if satisfied that it is fair and reasonable that the property should be delivered to, or vested in, the applicant.

121. Bankruptcy trustee may be required to elect whether to disclaim

The bankruptcy trustee loses the right to disclaim onerous property if—

(a) a person whose rights would be affected by the disclaimer has sent the bankruptcy trustee a notice requiring the bankruptcy trustee to elect whether to disclaim that property;

(b) the notice specifies a deadline for the disclaimer that is not less than twenty-one days after the bankruptcy trustee has received the notice; and

(c) the bankruptcy trustee does not disclaim that property before that deadline.

122. Liability for rentcharge on bankrupt's land after disclaimer

(1) If land disclaimed by the bankruptcy trustee is subject to a rentcharge, the vesting of that land in any other person (including the State), or the person's successors in title, does not make any of them personally liable for the rentcharge.

(2) Subsection (1) does not affect the liability of a person for a rentcharge accruing after the person has taken possession or control of the land.

123. Transmission of interest in land

(1) This section applies to an interest in land that—

(a) is owned by the bankrupt;

(b) is subject to a mortgage or a charge; and

(c) is not disclaimed by the bankruptcy trustee.

(2) The bankruptcy trustee shall—

(a) arrange for the transmission of the interest in the land to the bankruptcy trustee to be registered under the Land Registration Act, 2012 (No. 3 of 2012); or

(b) give notice to the mortgagee or other person entitled under the charge that the bankruptcy trustee cannot, or does not intend to, register transmission of the interest in the land.

(3) A notice given under subsection (2)(b) is notice that—

(a) the interest has vested in the bankruptcy trustee; and

(b) the mortgagee or holder of the charge is, on taking possession of, or selling, the interest, liable to account to the bankruptcy trustee as if that trustee were the proprietor of the interest.

124. Bankruptcy trustee cannot claim interest in land if bankrupt remains in possession until discharge

(1) The bankruptcy trustee cannot, after the bankrupt's discharge, claim an interest in land to which section 123(1) applies and for which the bankruptcy trustee has not registered a transmission if the bankrupt—

(a) was in possession of the interest when the bankruptcy commenced; and

(b) remained in possession until discharge from bankruptcy.

(2) Subsection (1) applies whether or not the bankruptcy trustee gave a notice under section 123(2)(b).

(3) However, the bankruptcy trustee may apply to the Court for an order that the bankruptcy trustee is entitled, after discharge, to claim the bankrupt's interest in the land.

(4) In deciding whether or not to make an order on the hearing of an application made under subsection (3), the Court shall have regard to—

(a) the good faith of the bankrupt;

(b) the time that has elapsed since the bankruptcy commenced;

(c) the value of any improvements made by the bankrupt; and

(d) all other relevant matters.

125. Bankruptcy trustee may transfer shares and other securities

(1) The bankruptcy trustee may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it but for the bankruptcy:

(a) securities of a company;

(b) securities of the Government of Kenya;

(c) securities issued by a local authority;

(d) shares in ships;

(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 being requested to do so by the bankruptcy trustee, do whatever is necessary for the transfer to be completed.

(3) If the bankruptcy trustee proposes to transfer shares of a company, a shareholder—

(a) to whom the shares are required to be offered for sale in accordance with the company's constitution; and

(b) who agrees to purchase them,

shall pay a fair price for the shares, whether or not that constitution provides a procedure for fixing the price.

126. Bankruptcy trustee may disclaim liability under shares

A bankruptcy trustee may disclaim any liability under shares owned by the bankrupt in any company by disclaiming the shares as onerous property under section 118, but sections 120 and section 121 do not apply to a disclaimer of liability under shares.

127. Bankruptcy trustee may disclaim liability under shares

(1) The bankruptcy trustee may disclaim a liability under shares owned by the bankrupt in a company by disclaiming them as onerous property in accordance with section 118.

(2) Neither section 120 nor section 121 applies to a disclaimer of liability under shares.

128. Bankruptcy trustee may be required to elect whether to disclaim liability under shares

The bankruptcy trustee loses the right to disclaim liability under shares if—

(a) the company or a person who has an interest in the shares has sent the bankruptcy trustee a notice requiring that trustee to elect whether to disclaim liability under the shares;

(b) the notice specifies a deadline for the disclaimer that is not less than twenty-one days after the bankruptcy trustee has received the notice; and

(c) the bankruptcy trustee does not disclaim liability under the shares before that deadline.

129. Transfer of shares after disclaimer

(1) After disclaimer, the bankruptcy trustee may, subject to any other written law and to the company's constitution, transfer the relevant shares to any person who has an interest in them.

(2) If that person refuses to accept the transfer, or if no person has an interest in them, the bankruptcy trustee may transfer the shares to the bankrupt if the bankrupt consents, and in that case the bankrupt is entitled as against the bankruptcy trustee to retain the shares and the proceeds if the bankrupt sells them.

(3) If the bankruptcy trustee does not transfer the shares to a person who has an interest in them or to the bankrupt, the directors of the company may—

(a) sell the shares; or

(b) with the Court's approval and whatever any other written law may provide – cancel the shares if they believe it is in the company's best

interests to do so.

(4) The bankruptcy trustee is a director of the company for the purposes of transferring, selling, or cancelling the shares under this section if—

(a) immediately before the bankruptcy commenced, the bankrupt was a director of the company; and

(b) the number of directors is fewer than the minimum number of directors required by the Companies Act, 2015 or the company's constitution as a result of the bankrupt's disqualification as a director.

130. Company may prove for unpaid calls

(1) This section applies if the bankruptcy trustee has disclaimed liability under shares and the company is not in liquidation.

(2) The company may prove in the bankruptcy for—

(a) the amount of unpaid calls made before the bankruptcy commenced in respect of the bankrupt's shares; and

(b) the value of calls to be made in respect of the bankrupt's shares within one year after the bankruptcy commenced.

(3 If the bankruptcy trustee and the company cannot agree, the Court, may on the application of either of them, make an order determining the value of the calls to be made.

Division 11 — Goods held by bankrupt under credit purchase transaction

131. Interpretation: Division 11

In this Division —

"cash price", in relation to a sale of goods, means—

(a) the lowest price at which a person could have bought those goods from the creditor on the basis of payment in full at the time the sale was made; or

(b) if there is no such price—the fair market value of those goods at the time the sale was made;

"creditor",in relation to a credit purchase transaction, means—

(a) the person disposing of the goods under the transaction; and

(b) if the rights of that person are transferred by assignment or by operation of law, means the person for the time being entitled to those rights:

"debtor",in relation to a credit purchase transaction, means—

(a) the person to whom goods are disposed of under the transaction; and

(b) if the rights of that person are transferred by assignment or by operation of law, means the person for the time being entitled to those rights:

hirer", in relation to a credit purchase transaction, means—

(a) the person who is entitled to the use of the goods under the transaction; and

(b) if the rights of that person are transferred by assignment or by operation of law, means the person for the time being entitled to those rights.

132. Restrictions on creditor dealing with goods

(1) If a bankrupt acquired goods under a credit purchase transaction before the bankruptcy commenced and the creditor either—

(a) took possession of the goods within the twenty-one days immediately before the time when the bankruptcy commenced, and after that time

still possesses them; or

(b) takes possession of the goods after that time,

the creditor may not sell or dispose of the goods or part with possession of them until the expiry of thirty days from and including the date when the creditor serves a post-possession notice on the bankruptcy trustee.

(2) Subsection (1) does not apply if the creditor, with the consent of the bankruptcy trustee, sells or parts with possession of the goods before the end of the thirty-day period.

(3) A sale or disposal in contravention of subsection (1) is void as against the bankruptcy trustee.

133. Bankruptcy trustee's powers in relation to goods that are subject to a credit purchase transaction

(1) In the case of goods to which section 131 applies, the bankruptcy trustee may—

(a) within the thirty-day period referred to in that section, exercise any right conferred by any relevant written law to introduce a buyer for the goods; or

(b) at any time before the creditor sells or agrees to sell the goods under a power conferred by any such law or by the relevant credit purchase transaction, settle the bankrupt's obligations as debtor in accordance with that law or that transaction.

(2) This section applies irrespective any other written law to the contrary.

134. Creditor in possession of goods may prove in bankruptcy if bankruptcy trustee has not exercised powers.

(1) A creditor may prove in a bankruptcy for the amount (not exceeding that limited by any relevant written law) that the creditor was entitled to recover from the bankrupt as a debtor if—

(a) the creditor has taken possession of consumer goods purchased under a credit purchase transaction (whether before or after the bankruptcy of the debtor); and

(b) the bankruptcy trustee has not acted under section 133 in relation to the goods.

(2) If a creditor has proved in a bankruptcy in accordance with under subsection (1)—

(a) the creditor shall submit with the creditor's claim form the documents (if any) prescribed by the insolvency regulations for the purpose of this section; and

(b) the bankruptcy trustee may exercise the rights conferred on the debtor by any relevant written law that applies after the creditor takes possession of goods in accordance with that law.

135. Creditor may assign goods to bankruptcy trustee

If —

(a) the bankrupt purchased goods under a credit purchase transaction before the time the bankruptcy commenced; and

(b) at that time the creditor either—

(i) has not taken possession of the goods; or

(ii) has taken possession of them and has not sold or disposed of, or parted with possession of them,

the creditor may assign the goods to the bankruptcy trustee, and, if the creditor does so, may prove in the bankruptcy for the net balance due to the creditor under the transaction.

Division 12 — Second bankruptcies

136. Status of bankrupt's property on second bankruptcy

(1) This section applies to and in respect of a bankrupt who, before discharge, is adjudged bankrupt for a second time.

(2) 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) vests in the bankruptcy trustee in the second bankruptcy.

(3) Despite subsection (2), the Court may, if it considers it appropriate to do so, order that all or part of the following assets or their proceeds vest in the bankruptcy trustee in the first bankruptcy:

(a) assets in the second bankruptcy that, in the Court's opinion, were acquired independently of the creditors in the second bankruptcy;

(b) assets in the second bankruptcy that devolved on the bankrupt.

(4) A surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and is payable to the bankruptcy trustee in the first bankruptcy.

(5) This section has effect despite section 104.

137. Effect of notice to bankruptcy trustee of application for bankruptcy

(1) This section applies if the bankruptcy trustee in respect of a bankrupt's estate receives notice that a creditor has lodged an application for another bankruptcy.

(2) The bankruptcy trustee shall hold property in that trustee's possession that has been acquired by, or passed to, the bankrupt since the first bankruptcy until the application for the other bankruptcy has been dealt with.

(3) The bankruptcy trustee shall transfer the property and its proceeds, less any deduction for the bankruptcy trustee's costs and expenses, to the bankruptcy trustee in the other bankruptcy if—

(a) the creditor's application results in another bankruptcy; or

(b) the bankrupt is automatically adjudged bankrupt on the bankrupt's own application.

Division 13 — Persons jointly adjudged bankrupt

138. Separate accounts to be kept for each bankrupt

If two or more persons are adjudged bankrupt jointly, the bankruptcy trustee shall keep distinct accounts in respect of—

(a) the joint estate; and

(b) the separate estate of each bankrupt.

139. How joint and separate estates are to be applied

(1) When two or more persons have been adjudged bankrupt jointly, the

bankruptcy trustee shall first apply—

(a) the joint estate to the debts due by the bankrupts jointly; and

(b) the separate estate of each bankrupt to the debts of that bankrupt.

(2) The bankruptcy trustee shall then—

(a) apply any surplus in the joint estate to the separate estate of each bankrupt in proportion to the interest of each bankrupt in the joint estate; and

(b) credit any surplus in the separate estate of a bankrupt to the joint estate.

Division 14 — Duties of bankrupt

140. General duty of bankrupt

(1) A bankrupt shall, to the best of the bankrupt's ability, assist in the realisation of the bankrupt's property and the distribution of the proceeds among the creditors.

(2) The duty imposed by subsection (1) is in addition to any other duty imposed on the bankrupt by this Act or by any other written law.

141. Bankrupt to disclose property acquired before discharge

(1) As soon as practicable after acquisition, the bankrupt shall notify the bankruptcy trustee of any property that—

(a) was acquired by, or passed to, the bankrupt before discharge; and

(b) is divisible among the creditors.

(2) A bankrupt who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

142. Bankrupt to deliver property to bankruptcy trustee on demand

(1) On demand by the bankruptcy trustee, the bankrupt shall deliver to the bankruptcy trustee, or to a person authorised by the bankruptcy trustee to receive it, all of the bankrupt's property that—

(a) is divisible among the creditors; and

(b) is under the bankrupt's control.

(2) On demand by the bankruptcy trustee, the bankrupt shall deliver to the bankruptcy trustee, or to a person authorised by the bankruptcy trustee to receive it, all property that is acquired by, or passes to, the bankrupt before the bankrupt's discharge.

(3) A bankrupt shall take all the steps (including the steps specified in subsection (4)) in relation to the bankrupt's property, and the distribution of the proceeds to the creditors, that are—

(a) required by the bankruptcy trustee;

(b) prescribed by the insolvency regulations for the purposes of this section;

(c) directed to be taken by the Court by an order made in reference to the bankruptcy; or

(d) directed to be done by the Court on an application by the bankruptcy trustee or a creditor.

(4) The steps referred to in subsection (3) include the execution by the bankrupt of powers of attorney, transfers, and other relevant documents.

(5) A bankrupt who, without reasonable excuse, fails to comply with a requirement imposed by or under this section is guilty of contempt of the Court and is liable to be punished accordingly, in addition to any other punishment to which the bankrupt may be subject.

143. Court may impose charge on bankrupt's property

(1) If—

(a) any property consisting of an interest in a dwelling house that is occupied by the bankrupt or by the bankrupt's spouse or former spouse is comprised in the bankrupt's estate; and

(b) the bankruptcy trustee is, for any reason, unable for the time being to realise that property,

that trustee may apply to the Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If, on the hearing of an application under this section the Court imposes a charge on any property—

(a) the benefit of that charge is included in the bankrupt's estate; and

(b) is enforceable up to the charged value from time to time, for the payment of any amount that is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the rate prescribed by the insolvency regulations for the purposes of this section.

(3) In subsection (2), the charged value means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order; and

(b) interest on that amount from the date of the charging order at the prescribed rate.

(4) In determining the value of an interest for the purposes of this section, the Court shall disregard any matter that it is required to disregard by the insolvency regulations.

(5) In making an order under this section in respect of property vested in the bankruptcy trustee, the Court shall provide, in accordance with the insolvency regulations, for the property—

(a) to cease to be included in the bankrupt's estate; and

(b) to vest in the bankrupt subject to the charge and any prior charge.

144. Bankrupt to give bankruptcy trustee accounting records and other documents

(1) As soon as practicable after being adjudged bankrupt, the bankrupt shall—

(a) deliver to the bankruptcy trustee relevant documents that are in the bankrupt's possession or control; and

(b) notify that trustee of relevant documents that are in the possession or control of any other person.

(2) In subsection (1), "relevant documents" means all accounting records and other documents relating to the bankrupt's estate.

145. Bankrupt to give bankruptcy trustee information relating to property

A bankrupt shall —

(a) as soon as practicable after being adjudged bankrupt—

(i) give the bankruptcy trustee a complete and accurate list of the bankrupt's property and of the bankrupt's creditors and debtors, and update the lists as necessary;

(ii) give the bankruptcy trustee any other information relating to the bankrupt's property that that trustee requires;

(b) attend before the bankruptcy trustee at all reasonable times whenever required by that trustee to so; and

(c) verify any statement by statutory declaration when required by that trustee to do so.

146. Bankrupt to give bankruptcy trustee information relating to income and expenditure

(1) Whenever the bankruptcy trustee requires it, the bankrupt shall provide the bankruptcy trustee with details of the bankrupt's income and expenditure since the bankruptcy commenced.

(2) A bankrupt who, without reasonable excuse, fails to comply with a requirement of the bankruptcy trustee under subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

147. Bankrupt to notify bankruptcy trustee of change in personal information

(1) A bankrupt shall, within seven days after any change occurs in the bankrupt's name, address, employment or income, notify the bankruptcy trustee of the change.

(2) A bankrupt who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(3) If, after being convicted of an offence under subsection (2), a bankrupt, without reasonable excuse, continues to fail to notify the relevant change to the bankruptcy trustee, the bankrupt commits a further offence on each day during which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

148. Bankrupt to give bankruptcy trustee financial information

(1) The bankrupt shall give the bankruptcy trustee (or any person employed by the bankruptcy trustee) the information and details that are necessary to prepare a financial statement that shows the financial position of the bankrupt's estate.

(2) If required to do so by the bankruptcy trustee, the bankrupt shall, before the deadline, prepare and deliver to the bankruptcy trustee a full, true, and detailed financial statement that shows—

(a) details of the bankrupt's trading and stocktaking; and

(b) details of the bankrupt's profit and losses during any period within the three years immediately preceding the date on which the bankruptcy commenced.

(3) To enable the bankrupt to prepare the financial statement referred to in subsection (2)—

(a) the bankruptcy trustee shall give the bankrupt full access to the bankrupt's accounting records that are in the bankruptcy trustee's possession; and

(b) if the bankruptcy trustee believes it necessary to do so—that trustee shall provide the bankrupt with the assistance of a certified public accountant at the expense of the bankrupt's estate.

(4) A bankrupt who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(5) If, after being convicted of an offence under subsection (4), a bankrupt, without reasonable excuse, continues to fail to comply with the relevant requirement, the bankrupt commits a further offence on each day during which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

(6) For the purposes of this section, the deadline is the expiry of twenty-one days after the bankruptcy commenced or of such extended period as the bankruptcy trustee may allow.

Division 15 — Restrictions on bankrupt during bankruptcy

149. Interpretation: Division 15

In this Division—

"building", in relation to a bankrupt, includes a reference to a part of a building in which the bankrupt holds a proprietorial interest;

"place" includes building, premises, aircraft, ship, or other means of transporting people or goods;

"relevant property", in relation to a bankrupt, means—

(a) property of the bankrupt; or

(b) a document relating to the bankrupt's property, conduct, or dealings.

150. Bankrupt can be required to contribute to payment of debts

(1) If required by the bankruptcy trustee to do so, the bankrupt shall pay an amount or periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts.

(2) The bankruptcy trustee may impose conditions with respect to the payments, including conditions as the dates on which and the manner in which they are to be made, and may from time to time amend any such conditions or substitute new conditions for existing ones.

(3) In deciding whether to require the bankrupt to make the payment or payments, the bankruptcy trustee 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 the bankrupt's relatives and dependants.

(4) If the bankrupt fails to comply with a requirement made under subsection (1), or with a condition imposed in respect of such a requirement under subsection (2), the bankruptcy trustee may make an application to the Court for an order under subsection (5).

(5) On the hearing of an application made under subsection (4), the Court may order the bankrupt to pay the amount or amounts required by the bankruptcy trustee under subsection (1), or to comply with any condition imposed in respect of the requirement under subsection (2).

(6) On the hearing of an application made to the Court by the bankruptcy trustee, the bankrupt, or a creditor, the Court may—

(a) amend, suspend, or cancel the bankrupt's obligations to make payments under this section:

(b) amend, suspend or discharge an order made under subsection (5); or

(c) remit any arrears owing by the bankrupt.

151 Onus of proof if bankrupt defaults in making payment

If a bankrupt fails to make a payment required under section 150, the onus is on the bankrupt in any proceedings arising out of the failure to show that the failure was not deliberate.

152. Prohibition of bankrupt entering business

(1) An undischarged bankrupt shall not, without the consent of the bankruptcy trustee or the Court (either 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 incorporated body that is owned, managed, or controlled by a relative of the bankrupt.

(2) A bankrupt who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

153. Warrant to search for and seize bankrupt's property

(1) The Court may issue a search warrant to the bankruptcy trustee or any other person if it reasonably believes that any relevant property is concealed in a specified place.

(2) The warrant may authorise the bankruptcy trustee or other person named in the warrant, together with any assistants that may be necessary—

(a) to enter and search the place;

(b) to seize and take possession of relevant property;

(c) if necessary, to use force to enter the place (including by breaking open doors); and

(d) to open any container found in the place, by force if necessary.

154. Seizure of bankrupt's property

(1) If authorised by a warrant issued by the Court, the bankruptcy trustee or (if not the bankruptcy trustee) the Official Receiver, with such assistants as are considered necessary—

(a) may seize any part of the bankrupt's property that is under the control of the bankrupt or of any other person; and

(b) with a view to seizing the bankrupt's property, may—

(i) break open any building or room of the bankrupt where the bankrupt is believed to be;

(ii) break open any building, room, 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.

(2) For the purposes of this section and section 153, if the execution of a warrant takes place without the bankrupt being present, the person executing the warrant shall leave in a prominent place at the place searched a notice that—

(a) states the date and time when the warrant was executed; and

(b) states the name of the person who executed it.

(3) For the purposes of this section and section 153, the person executing the warrant shall leave with the bankrupt, or leave in a prominent place at the place searched if the bankrupt is not present, a list of any property seized during the course of the search.

(4) Subsection (3) does not apply if it is impractical to leave a list of property seized or if the bankrupt consents to receiving a list sent in accordance with subsection (5).

(5) If subsection (4) applies, the person executing the search shall leave with the notice referred to in subsection (2), or with the bankrupt if the bankrupt is present, a notice stating that—

(a) relevant property has been seized in the course of the search; and

(b) within seven days after the execution of the warrant—a list of the property seized will be delivered or sent to the bankrupt or left in a prominent position at the place searched.

(6) If subsection (5) applies, the person executing the warrant shall ensure that within seven days after the execution of the warrant there is delivered or sent to the bankrupt, or left in a prominent position at the place searched, a notice listing the property seized and identifying the place where the property was seized.

155. Bankrupt to vacate land or buildings if required to do so

(1) The bankruptcy trustee may require the bankrupt and relatives of the bankrupt to vacate any land or building that is part of the property vested in the bankruptcy trustee under the bankruptcy.

(2) If the bankruptcy trustee's demand is not complied with, the bankruptcy trustee may apply to a court of competent jurisdiction for an order for possession of the land or building.

(3) On the hearing of an application made under subsection (2), the court may make an order for the possession of the land or building if it believes that the bankrupt or relatives of the bankrupt have no justification for remaining there.

(4) The bankrupt or the bankrupt's relatives concerned are entitled to appear and be heard as respondents at the hearing.

156. Bankrupt's right to inspect documents

A bankrupt is entitled at any reasonable time to inspect and to take copies of—

(a) the bankrupt's accounting records;

(b) the bankrupt's answers to questions put to the bankrupt in the course of an examination under this Act;

(c) the statement of the bankrupt's financial position;

(d) all proofs of debt;

(e) the minutes of any creditors' meeting; and

(f) the record of any examination of the bankrupt.

157. Restrictions on bankrupt dealing with property

(1) After the bankruptcy commences, the bankrupt, and any person (other than the bankruptcy trustee) who claims through or under the bankrupt, ceases to be entitled—

(a) to recover property that is part of the bankrupt's estate; or

(b) to give a release or discharge in relation to that property.

(2) Subsection (1) applies subject to sections 114 and 115 and whether or not the bankruptcy trustee has intervened.

158. Bankrupt prohibited from taking steps to defeat beneficial interests of others in bankrupt's property

(1) After the bankruptcy has commenced, the bankrupt may not execute a power of appointment, or any other power vested in the bankrupt, if the result would be to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be beneficially entitled at any time before the bankrupt's discharge.

(2) The restriction on the bankrupt in subsection (1) applies—

(a) both before and after the bankrupt obtains a discharge; and

(b) subject to sections 114 and 115 (transactions entered into in good faith).

159. Responsibility of bank to notify bankruptcy trustee of bankrupt's account

(1) As soon as practicable after becoming aware or forming s reasonable suspicion that a customer is an undischarged bankrupt, a bank shall—

(a) notify the bankruptcy trustee of any account that the customer holds with the bank; and

(b) not pay any money from the account, unless subsection (2) applies.

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

(a) the bank is authorised by an order of the Court or instructed by the bankruptcy trustee to do so; or

(b) the bank has notified the bankruptcy trustee of the account and has not, within one month after the notification, received any instructions from the bankruptcy trustee.

(3) At the same time as the bank notifies the bankruptcy trustee under subsection (1)(a), it shall inform the customer that it has notified the bankruptcy trustee in accordance with subsection (1).

(4) A bank that—

(a) without reasonable excused, fails to comply with subsection (1)(a) or (3); or

(b) contravenes subsection (1)(b), commits an offence and on conviction is liable to a fine not exceeding two million shillings.

160. Official Receiver entitled to require bank to search records relating to bankrupt's account

(1) The Official Receiver may, by notice, require a bank to search its account records by comparing the names of its customers with the names (including any aliases) of undischarged bankrupts specified in the notice or in a list that is attached to it.

(2) Within seven days after receiving the notice, the bank shall search its account records and provide the Official Receiver with written results of the search in so far as the search reveals the names of undischarged bankrupts specified in the notice or list.

(3) If a bank fails to comply with subsection (2), the Official Receiver may make an application to the Court for an order under subsection (4).

(4) On the hearing of an application made under subsection (3), the Court shall, unless it considers that the Official Receiver's requirement was unjustified, make an order directing the bank to comply with the requirement.

(5) The bank is entitled to be served with a copy of the application and to appear and be heard as respondent at the hearing of the application.

Division 16 — Provision allowed for bankrupt during bankruptcy

161. Bankrupt entitled to retain certain assets

(1) A bankrupt may choose and retain as the bankrupt's own property assets of a description specified in subsection (2) up to a maximum value determined in accordance with subsection (3).

(2) The assets are—

(a) the bankrupt's necessary tools of trade;

(b) necessary household furniture and personal effects (including clothing) for the bankrupt and the bankrupt's relatives and dependants; and

(c) a motor vehicle.

(3) The maximum value of those assets are—

(a) in the case of the bankrupt's necessary tools of trade—the value fixed by the bankruptcy trustee;

(b) in the case of necessary household furniture and personal effects—the value fixed by the bankruptcy trustee; and

(c) a motor vehicle—one million shillings or, if a greater amount is prescribed by the insolvency regulations, that amount.

162. Bankrupt may retain certain assets with consent of creditors

A bankrupt may retain necessary tools of trade and necessary household furniture and effects that are worth more than the maximum value fixed in accordance with section 161, if the bankrupts' creditors consent to it by an ordinary resolution passed at a creditors' meeting.

163. Retention of assets not to affect rights under charge or credit purchase transaction

(1) Subject to subsection (2), the retention of an asset by the bankrupt under section 161 or 162 does not affect rights arising under a valid charge, bailment contract or credit purchase transaction in respect of the asset.

(2) In relation to goods that are in the possession of the bankrupt under a bailment contract or credit purchase transaction, the Court may make an order authorising the bankruptcy trustee to dispose of the goods as if all the rights of the owner under the contract or agreement were vested in the bankrupt.

(3) An order under subsection (2) may be made—

(a) only on the application of the bankruptcy trustee; and

(b) only if the Court is satisfied that disposal of the goods would be in the overall best interests of the bankrupt's creditors.

(4) An order under subsection (2) is subject to the condition that—

(a) the net proceeds of disposal of the goods; 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 that would be realised on a sale of the goods at market value, be applied towards discharging the amounts payable under the bailment contract or credit purchase transaction.

164. Retention provisions not to confer rights to other assets

The fact that the net value of the assets that the bankrupt retains is less than the maximum values specified in section 161 does not give the bankrupt any rights in relation to other assets in the bankrupt's estate.

165. Relative or dependant entitled to exercise bankrupt's right to retain assets

If the bankrupt has died, a relative or dependant of the bankrupt, who has been approved for this purpose by the bankruptcy trustee or the Court, may exercise the right to retain assets under section 161 or 162 for the benefit of the bankrupt's relatives and dependants.

166. Bankruptcy trustee may make allowance to bankrupt

The bankruptcy trustee may make an allowance out of the property of the bankrupt to the bankrupt, or to any relative or dependant of the bankrupt, for the support of the bankrupt and the bankrupt's relatives and dependants.

167. Bankruptcy trustee may allow bankrupt to retain money

(1) The bankruptcy trustee may allow the bankrupt to retain, for the immediate maintenance of the bankrupt and the bankrupt's relatives and dependants, money up to the prescribed limit that the bankrupt has in the bankrupt's possession or in a bank account when the bankruptcy commenced.

(2) For the purpose of subsection (1), the prescribed limit is one hundred thousand shillings or, if a greater amount is prescribed by the insolvency regulations for the purposes of this section, that amount.

Division 17 — Powers of bankruptcy trustee and the Court to examine bankrupt and others

Subdivision 1 — Examination by bankruptcy trustee

168. Bankruptcy trustee may summon bankrupt and others to be examined

(1) The bankruptcy trustee may, at any time before or after a bankrupt's discharge—

(a) serve on any of the persons listed in subsection (2) a summons to appear before the bankruptcy trustee or the Court to be examined on oath in relation to the bankrupt's conduct, affairs or property; and

(b) require that person—

(i) to produce and surrender to the bankruptcy trustee or the Court any document under that person's control that relates to the bankrupt's conduct, affairs or property; or

(ii) to answer any question put to that person relating to the bankrupt's conduct, affairs or property.

(2) The following are the persons referred to in subsection (1):

(a) the bankrupt;

(b) the bankrupt's spouse;

(c) a person known or suspected to be in possession any of the bankrupt's property or any document relating to the bankrupt's conduct, affairs or property;

(d) a person believed to owe the bankrupt money;

(e) a person believed by the bankruptcy trustee to be able to provide information regarding—

(i) the bankrupt; or

(ii) the bankrupt's conduct, affairs or property;

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

169. Conduct of examination of person summoned by bankruptcy trustee

(1) The bankruptcy trustee may examine on oath the persons summoned for examination in accordance with section 168.

(2) The bankruptcy trustee shall ensure that the examination is recorded in writing, and that the person summoned signs the written record unless excused from doing so.

(3) If person, without reasonable excuse, refuses to sign the refusal to sign the written record of the person's examination before the bankruptcy trustee, the bankruptcy trustee may report the person's conduct to the Court, in which case the Court may, if satisfied that the refusal was unjustified, find the person to be in contempt of the Court.

(4) If a person summoned for examination by the bankruptcy fails to appear at the appointed time and has no reasonable excuse, the Court—

(a) may, on the bankruptcy trustee's application, by warrant, have the person arrested and brought before the Court for examination; and

(b) if it does so, may order the person to pay all the expenses arising out of the arrest and examination before the Court if it believes that person's evidence was required for the purpose of ascertaining the bankrupt's estate.

170. Expenses of person summoned by bankruptcy trustee or the Court

A person who is summoned for examination by the bankruptcy trustee—

(a) is entitled to be paid the expenses incurred in attending the examination, not exceeding the amount prescribed by the insolvency regulations for the purposes of this section; and

(b) is not obliged to attend the examination if those expenses have not been paid or tendered to the person before the examination.

171. Entitlement of examinee to be represented

(1) A person who is examined or questioned at an examination by the bankruptcy trustee is entitled to be represented by an advocate.

(2) Such a person may be questioned by the bankrupt's advocate, and any answers given by the person form part of the examination.

172. Creditor may inspect record of examination

A creditor, or the creditor's advocate, is entitled at any reasonable time to inspect the record of the examination of a person conducted in accordance with section 169.

173. Report of examination not to be published without court's consent

(1) A person shall not, without the approval of the Court, publish a report of—

(a) any examination of a person summoned for examination by the bankruptcy trustee; or

(b) any matter arising in the course of the examination.

(2) A person who wishes to publish a report of such an examination or matter may make an application to the Court for approval to publish it.

(3) On the hearing of an application made under subsection (2), the Court may give approval for the publication of a report subject to such conditions (if any) as the Court may specify.

(4) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three months, or to both.

174. Examination provisions also apply when bankruptcy trustee appointed interim trustee in respect of debtor's property

Sections 168 to 173 also apply when the bankruptcy trustee has been appointed as interim trustee in respect of all or part of a debtor's property under section 36 and, for that purpose, references in sections 168 to 173 to the bankrupt are to be read with as if they were references to the debtor.

175. No lien over bankrupt's documents and other records

(1) A person is not entitled as against the bankruptcy trustee to withhold possession of, or claim a lien over—

(a) a document that belongs to the bankrupt; or;

(b) the bankrupt's business records.

(2) However, a person may claim as a preferential creditor under paragraph 3(1)(f) of the Second Schedule if the person—

(a) has performed services in connection with the bankrupt's business records or a document belonging to the bankrupt;

(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 business records or document.

(3) The limit to which the person can claim as a preferential creditor under paragraph 3(1)(f) of the Second Schedule is ten percent of the total value of the services specified in subsection (2), up to a maximum amount of two hundred thousand shillings.

176. Offences relating to conduct of examinations by bankruptcy trustee

(1) A person who, without reasonable excuse—

(a) fails to comply with a summons attend the public examination of a bankrupt as required by section 168(1);

(b) fails without reasonable excuse to produce a document that the person is required to produce as required by section 168(1)(b)(i);

(c) fails to answer a question as required by section 168(1)(b)(ii); or

(d) in purporting to answer such a question, gives an answer that the person knows, or ought reasonably to know, is false or misleading in a material respect,

commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(2) A person who is questioned under section 168(1)(b)(ii) shall answer all questions put to the person in relation to the bankrupt’s conduct, affairs and property to the extent that the person is able to do so.

(3) A person is not excused from answering a question because the question may incriminate or tend to incriminate the person.

(4) Except as provided by subsection (5), a statement made by a person examined or questioned under section 168(1)(b)(ii) in response to a question put to the person in the exercise of a power conferred by this Part is not admissible in criminal proceedings against the person.

(5) Such a statement is admissible in any such proceedings if—

(a) the person was examined or questioned under oath and is charged with an offence under section 108 or 114 of the Penal Code (which respectively relate to perjury and subornation of perjury and to false swearing); or

(b) the statement was made by the bankrupt and the bankrupt is charged with an offence under subsection (1)(c) or (d).

Subdivision 2 — Public examination before the Court

177. Court to hold public examination if bankruptcy trustee or creditors require

(1) At any time before an absolute order for a bankrupt's discharge is made—

(a) the bankruptcy trustee; or

(b) if a ordinary resolution has been passed at a creditor's meeting seeking the public examination of the bankrupt before the Court-any of the creditors concerned,

may make an application to the Court for an order that the bankrupt be publicly examined before the Court.

(2) On the hearing of an application made under subsection (1), the Court shall, subject to subsection (3), make an order directing the bankrupt to be publicly examined before the Court and shall fix a time and date for the holding of the examination. The date fixed may not be earlier than fourteen days from the date of the order unless the Court is of the opinion that there are compelling reasons for holding the examination sooner.

(3) The Court shall reject a copy of a creditors' ordinary lodged under subsection (1) unless it is authenticated by either the bankruptcy trustee or the chairperson of the meeting at which the resolution was passed.

178. Bankruptcy trustee to serve notice of examination on bankrupt

(1) As soon as practicable after the Court has made an order under section 177, the bankruptcy trustee shall serve a copy of the order on the bankrupt.

(2) At least seven days before the date fixed for holding the examination, the bankruptcy trustee shall—

(a) publish a notice advertising the examination—

(i) once in the *Gazette*; and

(ii) once in at least two newspapers circulating in the area in which the bankrupt resides; and

(b) send a notice to each creditor a notice giving details of the time, date and place of the examination.

179. Bankruptcy trustee to lodge report with the Court before start of examination

Before the public examination of a bankrupt before the Court begins, the bankruptcy trustee shall lodge with the Court a report on—

(a) the bankrupt’s estate;

(b) the bankrupt’s conduct; and

(c) all other matters of which the Court should be informed.

180. Conduct of public examination before the Court

(1) At the time and date fixed by the Court for holding the public examination of a bankrupt, the bankrupt shall attend the examination, and may be examined as to the bankrupt’s conduct, affairs and property.

(2) At the examination, the following persons may examine the bankrupt:

(a) the bankruptcy trustee, or an advocate for the bankruptcy trustee;

(b) a creditor who has proved a claim, or an advocate for the creditor.

(3) A person examining the bankrupt shall examine the bankrupt on oath.

(4) At the examination, the bankrupt shall—

(a) produce all documents relevant to the examination that the person conducting the examination requires the bankrupt to produce; and

(b) answer all questions that that person asks the bankrupt or that the Court allows the bankrupt to be asked.

(5) The bankrupt is not entitled to advance notice of who will ask the questions or what the questions will be.

181. Bankruptcy trustee to ensure record of examination is kept

(1) On the holding of a public examination of a bankrupt before the Court, the Court shall ensure that a written record is made of the examination.

(2) The Court shall also ensure that the record of the examination—

(a) is read over to the bankrupt; and

(b) is made available for inspection at all reasonable times by the bankrupt's creditors or their advocates.

(3) If required by the Court to do so, the bankrupt shall sign the record of the examination.

(4) A bankrupt who, without reasonable excuse, fails to comply with a request made under subsection (3) is in contempt of the Court.

182. When examination ends

(1) The public examination of a bankrupt ends when the Court makes an order declaring that the examination is ended.

(2) The Court may make an order declaring that the examination has ended only if it is satisfied that the bankrupt’s conduct, affairs and property have been sufficiently investigated and that the investigation is complete.

183. Consequence of bankrupt’s failing to attend examination

If the bankrupt does not appear for the examination at the appointed time and has no reasonable excuse—

(a) the Court may, either on the bankruptcy trustee’s application or its own initiative, by warrant, have the bankrupt arrested and brought before the Court for examination; and

(b) the Court may order the bankrupt to pay all the expenses arising out of the arrest and examination before the Court, if it believes that the bankrupt’s evidence was necessary for the purposes of ascertaining the bankrupt’s estate.

184. Bankrupt entitled to be paid expenses for attending examination

(1) A bankrupt is entitled to be paid such expenses for attending a public examination before the Court as are prescribed by the insolvency regulations for the purposes of this section.

(2) If the relevant expenses have not been paid or tendered to the bankrupt, the bankrupt person is not obliged to attend the examination.

185. Power to extend examination companies controlled by bankrupt and bankrupt's associates

(1) If authorised by the Court, the bankruptcy trustee or a person appointed by that trustee may exercise the powers specified in subsection (2) in relation to a company with which the bankrupt is associated or a partnership of which the bankrupt is a member.

(2) The powers referred to in subsection (1) are the powers—

(a) to examine the documents of the company or partnership; and

(b) to examine—

(i) any past or present officer, employee or member of the company about the affairs of that body; or

(ii) any past or present member or employee about the affairs of the partnership.

(3) The bankruptcy trustee shall ensure that a record of the examination of a person under subsection (2)(b) is recorded in writing, and the person examined signs the written record unless for good reason the bankruptcy trustee excuses the person from doing so.

(4) For the purposes of this section, a company is associated with the bankrupt if the bankrupt is an officer or employee of the company or is in a position to appoint or control the appointment of its directors.

186. No privilege against self-incrimination, but statements not generally admissible in criminal proceedings against their maker

(1) A person (including the bankrupt) who is examined or questioned at a public examination of a bankrupt shall answer all questions put to the person in relation to the bankrupt's conduct, affairs and property to the extent that the person is able to do so.

(2) A person is not excused from answering a question because the question may incriminate or tend to incriminate the person.

(3) Except as provided by subsection (4), a statement made by a person examined or questioned under this Part in response to a question put to the person in the course of the public examination of a bankrupt is not admissible in criminal proceedings against the person.

(4) Such a statement is admissible in any such proceedings if—

(a) the person was examined or questioned under oath and is charged with an offence under—

(i) section 108 of the Penal Code (Cap. 63) (which deals with perjury and subornation of perjury); or

(ii) section 114 of that Code (which deals with false swearing); or

(b) the statement was made by the bankrupt and the bankrupt is charged with an offence under section 187(1) (c) or (d).

187. Offences relating to examinations of bankrupts

(1) A person who, without reasonable excuse—

(a) fails to attend an examination as required by section 180(1);

(b) fails to deliver a document as required under section 180(4)(a);

(c) fails to answer a question as required under section 180(4)(b); or

(d) in purporting to answer such a question, gives an answer that the person knows, or ought reasonably to know, is false or misleading in a material respect,

commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(2) The fact that a bankrupt may be charged with, tried for and convicted of an offence under subsection (1) does not prevent the Court from punishing the bankrupt for contempt of the Court.

188. Entitlement of examinee to be represented

(1) A person (including the bankrupt) who is examined or questioned at a public examination of a bankrupt is entitled to be represented by an advocate.

(2) Such a person may be questioned by the bankrupt's advocate, and any answers given by the person form part of the examination.

Division 18 — Status of bankrupt's contracts

189. Bankruptcy trustee may continue or disclaim bankrupt's contracts entered into before bankruptcy commenced

If a bankrupt is a party to a contract, the bankruptcy trustee may—

(a) continue the contract, subject to the terms of the contract and all relevant rules of law; or

(b) disclaim the contract if it is onerous property for the purposes of section 118.

190. Contract terminated by other contracting party

(1) This section applies if the other party to a contract to which the bankrupt is a party, in accordance with a term of the contract, terminates the contract in consequence of the bankruptcy.

(2) Irrespective of what the contract provides, the bankruptcy trustee may recover such amount from the other contracting party as the Court considers to be fair and reasonable, but that amount may not be greater than the amount calculated in accordance with the formula in subsection (3).

(3) The formula is as follows:

A= B - C, where—

A is the amount to be calculated for the purpose of subsection (2);

B is the amount payable to the bankrupt under the contract; and

C is the total of—

(a) the amount paid to the bankrupt;

(b) the cost to complete the contract; and

(c) a reasonable amount as a penalty for delay in completing the contract.

191. Transaction with bankrupt made in ignorance of bankruptcy

(1) This section applies to a payment of money or a delivery of property to a person who is adjudged bankrupt, whether the payment or delivery is made—

(a) on the order of the person; or

(b) from the person to an assignee or to the order of an assignee.

(2) The payment or delivery is a good discharge to the person who made the payment or delivery if—

(a) the payment or delivery was made before the bankruptcy of the person referred to in subsection (1) was advertised; and

(b) the person making the payment or delivery satisfies the Court that—

(i) that person had no knowledge of the bankruptcy or that an application for a bankruptcy order had been made; and

(ii) the payment or delivery was made in the ordinary course of business or was otherwise made in good faith.

192. Bankrupt's co-contractor may sue and be sued if there is a joint contractual liability

If the bankrupt is jointly liable under a contract with another person, that other person may sue and be sued on the contract without the bankrupt being joined as a party to the proceeding.

193. Bankruptcy trustee may recover advocate's costs

(1) The bankruptcy trustee may recover money paid by a bankrupt to the bankrupt's advocate for costs in obtaining a bankruptcy order, except for those (if any) prescribed for the purpose of this section by the insolvency regulations.

(2) Subsection (1) applies whether the relevant payment was made before or after the bankruptcy commenced.

Division 19 — Irregular transactions involving bankrupt

194. Application of Division 19

(1) This Division applies to the following irregular transactions by the bankrupt before the bankruptcy commenced:

(a) an insolvent transaction;

(b) an insolvent charge;

(c) an insolvent gift;

(d) a transaction at undervalue;

(e) a contribution by the bankrupt to the property of another person.

(2) The general effect of this Division is—

(a) to enable irregular transactions of the kinds listed in subsection (1)(a) to (c) to be cancelled on the initiative of the bankruptcy trustee; and

(b) to enable that trustee, in appropriate cases, to recover property or money from a party to an irregular transaction with the bankrupt.

195. Power to extend certain periods specified in this Division

For the purposes of this Division, a two year period or a six months period referred to in this Division can be extended—

(a) in the case of a bankruptcy order made on a creditor's application—by the period between the time when the application was served on the bankrupt and the time when the bankruptcy order was made; and

(b) in the case of a bankruptcy order made on the bankrupt's own application while a creditor's application was pending—by the period between the time when the creditor's application was served on the bankrupt and the time when the bankruptcy order was made.

196. Insolvent transactions may be cancelled by bankruptcy trustee

A transaction by a bankrupt can be cancelled on the bankruptcy trustee's initiative if it—

(a) is an insolvent transaction; and

(b) was made within two years immediately before the bankruptcy commenced.

197. Meaning of insolvent transaction for purposes of sections 196

(1) For the purposes of section 196, a transaction is an insolvent transaction by a bankrupt if it—

(a) is entered into or made at a time when the bankrupt is unable to pay the bankrupt's debts; and

(b) enables a creditor to receive more towards satisfaction of a debt by the bankrupt than the creditor would receive, or would be likely to receive, in the bankruptcy.

(2) Any of the following actions by a bankrupt is a transaction for the purpose of subsection (1):

(a) conveying or transferring the bankrupt's property;

(b) giving a charge over the bankrupt'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);

(f) any other act done or omitted to be done for the purpose of entering into such a transaction or giving effect to it.

198. Insolvent transaction presumed

For the purposes of section 196, a transaction that was entered into within the six months before a bankrupt is adjudged bankrupt is presumed, until the contrary is proved, to have been made at a time when the bankrupt is unable to pay the bankrupt's debts.

199. When series of transactions are to be regarded as single transaction

(1) This section applies if a series of transactions made for commercial purposes forms an integral part of a continuing business relationship (such as a running account) between a bankrupt and a creditor in circumstances in which, during the course of the relationship, the level of the bankrupt's net indebtedness to the creditor is increased and reduced from time to time.

(2) For the purposes of subsection (1), it does not matter whether persons other than the bankrupt or the creditor are parties to any of the transactions.

(3) When this section applies—

(a) section 196 applies in relation to all of the transactions forming part of the relationship as if they together formed a single transaction; and

(b) any particular transaction of the series referred to in subsection (1) may be treated as an insolvent transaction that can be cancelled by the bankruptcy trustee only if the effect of applying that section as provided by paragraph (a) is that the single transaction referred to

in that paragraph is treated as an insolvent transaction that can be cancelled by the bankruptcy trustee.

200. Insolvent charges can be cancelled on bankruptcy trustee's initiative

A charge over any property of a bankrupt can be cancelled on the bankruptcy trustee's initiative if—

(a) the charge was created within the two years immediately before the bankruptcy commenced; and

(b) immediately after the charge was given, the bankrupt was unable to pay the bankrupt's due debts.

201. Charge for new consideration or replacement charge not affected

(1) A charge may not be cancelled under section 200 if it secures—

(a) money actually advanced or paid;

(b) the actual price or value of property sold or transferred; or

(c) any other valuable consideration given,

in good faith by the secured creditor to the bankrupt at the time when, or at any time after, the charge was created.

(2) A charge may not be cancelled under section 200 if the charge is a replacement for an earlier charge that was given by the bankrupt more than two years before the bankruptcy commenced, except to the extent that—

(a) the amount secured by the substituted charge is greater than the amount that was secured by the earlier charge; or

(b) the value of the property that was subject to the substituted charge at the date of substitution was greater than the value of the property subject to the earlier charge at that date.

202. Presumption that bankrupt unable to pay due debts

A bankrupt who gave a charge within the six months immediately preceding the commencement of the bankruptcy is presumed, until the contrary is proved, to have been unable to pay the bankrupt's debts immediately after the charge was created.

203. Charge for unpaid purchase price given after sale of property

(1) If, in relation to property purchased by a bankrupt, the bankrupt has given to the seller a charge over the property within the two years immediately preceding the bankruptcy, section 200 does not affect the charge to the extent that it secures unpaid purchase money, but only if the charge was given not more than fourteen days after the date of the sale of the property to the bankrupt.

(2) Money is unpaid purchase money for the purpose of subsection (1) whether it is unpaid in relation to the property over which the charge is given or some other property.

204. Appropriation of payments by bankrupt to secured creditor

(1) This section applies if the bankrupt has made a payment or payments to a secured creditor after the bankrupt has given a charge to which section 202 or 203 applies.

(2) The bankruptcy trustee shall credit the bankrupt's payment or payments (as far as is necessary) towards—

(a) repayment of the money actually advanced or paid by the secured creditor to the bankrupt when or after the bankrupt gave the charge;

(b) payment of the actual price or value of property sold or supplied by the secured creditor to the bankrupt when or after the bankrupt gave the charge; or

(c) payment of any other liability of the bankrupt to the secured creditor in respect of any other valuable consideration given in good faith when or after the bankrupt gave the charge.

(3) This section does not apply to payments received by a bank in good faith in the ordinary course of business and without negligence.

205. Charge agreed before specified period not to be cancelled

A charge or a security right given by the bankrupt under an agreement to give the charge or create a security right that was made or made effective against third parties before the two years immediately before the bankruptcy is not liable to be cancelled under section 200.

[Act No. 13 of 2017, Sch.]

206. Cancellation of gifts made within two years before bankruptcy

A gift made by a bankrupt to another person can be cancelled on the bankruptcy trustee's initiative if the bankrupt made the gift within the two years immediately preceding the commencement of the bankruptcy.

207. Cancellation of gifts made by bankrupt made within five and two years before bankruptcy

(1) A gift by a bankrupt to another person can be also cancelled on the bankruptcy trustee's initiative if—

(a) the bankrupt made the gift during the period beginning five years and ending two years before the commencement of the bankruptcy; and

(b) at the time when the gift was made, the bankrupt was unable to pay the bankrupt's debts.

(2) A bankrupt is presumed to have been unable to pay the bankrupt's debts for the purpose of subsection (1)(b) unless the person claiming the gift proves that—

(a) immediately after the gift was made; or

(b) at any later time before the commencement of the bankruptcy,

the bankrupt was able to pay the bankrupt's debts without the aid of the property of which the gift was composed.

208. Procedure for cancelling irregular transactions

(1) The procedure set out in this section applies to the following irregular transactions:

(a) an insolvent transaction;

(b) an insolvent charge;

(c) an insolvent gift;

(d) any other transaction of a class prescribed by the insolvency regulations for the purposes of this section.

(2) A bankruptcy trustee who wishes to cancel an irregular transaction to which this section applies shall—

(a) lodge a notice with the Court that complies with subsection (3); and

(b) serve the notice on—

(i) the other party to the transaction; and

(ii) any other party from whom the bankruptcy trustee intends to recover.

(3) A notice complies with this subsection if it—

(a) is in writing;

(b) states the bankruptcy trustee's postal and street addresses and e-mail address (if any);

(c) specifies the irregular transaction to be cancelled;

(d) describes the property, or states the amount, that the bankruptcy trustee wishes to recover;

(e) includes a statement that the person named in the notice may object to the cancellation of the transaction by sending to the bankruptcy trustee a notice of objection to be received by the bankruptcy trustee at that trustee's postal, street or email address within twenty-one days after service on that person of that trustee's notice;

(f) states that a person making an objection is required to specify the reasons for the objection;

(g) states that the transaction will be cancelled as against the person named in the notice if that person does not object; and

(h) states that if the person named in the notice does object, the bankruptcy trustee may apply to the Court for the transaction to be cancelled.

(4) An irregular transaction is automatically cancelled in relation to a person on whom the bankruptcy trustee has served a bankruptcy trustee's notice, if the person has not objected by sending to the bankruptcy trustee a notice of objection that is received by the bankruptcy trustee at that trustee's postal, street or email address within twenty-one days after the bankruptcy trustee's notice has been served on that person.

(5) The bankruptcy trustee may disregard a notice of objection that fails to specify the reasons for the objection.

(6) The Court may, on the application of the bankruptcy trustee, cancel an irregular transaction that is not automatically cancelled by subsection (4).

209. Court may order retransfer of property or payment of an equivalent value

(1) On the cancellation of an irregular transaction under which property of the bankrupt, or an interest in property of the bankrupt, was transferred, the Court may make an order—

(a) for the retransfer to the bankruptcy trustee of the property or interest in the property; or

(b) for payment to the bankruptcy trustee of such amount as the Court considers appropriate, but the amount may not be greater than the value of the property, or interest in the property, at the time when the transaction was cancelled.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) is in addition to any other rights and remedies available to the bankruptcy trustee, and this section does not affect those rights and remedies.

210. Limits on what can be recovered

(1) The Court may not make an order under section 209 against a person if the person proves that when the person received the property or interest in the property—

(a) the person acted in good faith;

(b) a reasonable person in the same position would not have suspected that—

(i) in the case of an insolvent gift—the bankrupt was, or would become, unable to pay the bankrupt's debts without the aid of the property that the gift is composed of; or

(ii) in the case of any other irregular transaction of a kind to which section 208 applies—the bankrupt was, or would become, unable to pay the bankrupt's due debts; and

(c) the person gave value for the property or interest in the property or altered the person's position in the reasonably held belief that the transfer of the property or interest in the property to the person was valid and would not be cancelled.

211. Bankruptcy trustee may recover difference in value if transaction is found to be under value

(1) Under section 212, the bankruptcy trustee may recover from a party to a transaction with the bankrupt an amount calculated in accordance with the following formula:

$A = B - C$

where—

A is the amount to be calculated;

B is the value that the party received from the bankrupt under the transaction; and

C is the value (if any) that the bankrupt received from the party under the transaction.

(2) In this section and in section 212, "transaction" includes the giving of a guarantee by the bankrupt.

(3) The bankruptcy trustee may recover from the party the amount calculated under subsection (1) if—

(a) the bankrupt entered into the transaction with the party within the two years immediately before the bankruptcy commenced; and

(b) either—

(i) the bankrupt was unable to pay the bankrupt's debts when the transaction was entered into; or

(ii) the bankrupt became unable to pay the bankrupt's debts as a result of having entered into the transaction.

212. Court may order recipient of bankrupt's contribution to property of another to pay value to bankruptcy trustee

(1) The bankruptcy trustee may make an application to the Court for an order directing the recipient of a contribution by the bankrupt to the recipient's property to pay the value of the contribution to the bankruptcy trustee.

(2) On the hearing on an application made under subsection (1), the Court may make the order sought but only if satisfied that—

(a) the bankrupt was not paid an adequate amount in money or money's worth for the contribution;

(b) the value of the bankrupt's assets was reduced by the contribution; and

(c) the bankrupt made the contribution—

(i) within the two years immediately preceding the commencement of the bankruptcy; or

(ii) within the five years immediately before that commencement, and the recipient is not able to prove that the bankrupt, either at the time of the contribution or at any later time before that commencement, was able to pay the bankrupt's debts without the aid of the contribution.

(3) For the purposes of this section and section 213, a bankrupt has made a contribution to the recipient's property if the bankrupt has—

(a) erected buildings on, or otherwise improved, land or any other property of the recipient;

(b) bought land or any other property in the recipient's bought land or any other property in the recipient's name;

(c) provided money to buy land or any other property in the recipient's name or on the recipient's behalf; or

(d) paid instalments for the purchase of, or towards the purchase of, land or any other property in the recipient's name or on the recipient's behalf.

213. Court's powers in relation to bankrupt's contribution to recipient's property

(1) The Court may—

(a) ascertain the value of the bankrupt's contribution for the purposes of section 212; and

(b) order the recipient to pay an amount equal to that value to the bankruptcy trustee.

(2) In subsection (1)(a), the bankrupt's contribution includes any payments for legal expenses, interest, rates, and other expenses or charges.

(3) The Court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, if—

(a) the recipient acted in good faith and has altered the recipient's position in the reasonably held belief that the bankrupt'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.

(4) If the Court orders the recipient to repay the bankrupt's contribution or a part of it, it may in the same order or in a subsequent order—

(a) direct the bankruptcy trustee to sell the whole or part of the relevant property, and to convey or transfer it to the purchaser; and

(b) make vesting and other orders that are necessary for the sale and transfer of the property.

214. How bankruptcy trustee is to use repayment of bankrupt's contribution to property

(1) The bankruptcy trustee shall apply—

(a) the money repaid under section 212 by the recipient of a contribution by the bankrupt to property; or

(b) the proceeds of sale of that property, by taking the steps specified in subsection (2) in the order specified in that subsection.

(2) The steps to be taken by the bankruptcy trustee are as follows:

Step 1: The bankruptcy trustee shall keep as much of the proceeds as the bankruptcy trustee needs, when added to the other assets in the bankrupt's estate, to pay the creditors in full (including interest);

Step 2: If there is a surplus after the creditors have been paid in full, the bankruptcy trustee shall pay as much of the surplus to the recipient of the property to which the bankrupt has contributed as was repaid under section 212;

Step 3 The bankruptcy trustee may not pay anything to the bankrupt without having taken steps 1 and 2.

Division 20 — Processing of creditors' claims against bankrupt's estate

215. Interpretation: Division 20

(1) For the purposes of this Division, a creditor's claim is a document that a creditor submits to the bankruptcy trustee for the purpose of proving the debt.

(2) A debt is proved when it is allowed by the bankruptcy trustee.

216. What debts are provable debts

(1) For the purpose of this Division, a provable debt is a debt or liability that the bankrupt owes—

(a) at the commencement of the bankruptcy; or

(b) after that commencement but before discharge, because of an obligation incurred by the bankrupt before that commencement.

(2) A fine, penalty or other order made by a court ordering the payment of money that has been made following a conviction—

(a) is not a provable debt; and

(b) is not discharged when the bankrupt is discharged from bankruptcy.

217. Procedure for proving debt: creditor to submit claim form

(1) A creditor (including a creditor who has a preferential claim) who wishes to claim in the bankruptcy shall submit a creditor's claim to the bankruptcy trustee before the deadline for submitting claims.

(2) The bankruptcy trustee may accept such a claim only if it is in the form prescribed by the insolvency regulations for the purposes of this section.

(3) For the purpose of subsection (1), the deadline is either—

(a) the time specified by the bankruptcy trustee in a notice given to the creditor; or

(b) the time specified in an advertisement published by the bankruptcy trustee in a newspaper widely circulating in the area in which the creditor normally resides or carries on business.

(4) In submitting a claim, a creditor shall comply with the procedure and formalities (if any) prescribed by the insolvency regulations.

(5) The creditor is required to bear the costs of proving the debt, unless the Court makes an order as to the creditor's costs under section 225.

(6) The creditor may amend or withdraw the claim, but an amended claim has to comply with the formalities prescribed for the original claim.

218. Bankruptcy trustee required to examine creditor's claim

(1) The bankruptcy trustee shall examine each creditor's claim and the grounds of the debt, unless of the opinion that no dividend will be paid to creditors.

(2) As soon as practicable after examining a claim, the bankruptcy trustee shall do one or more of the following:

(a) wholly or partly allow the claim;

(b) wholly or partly reject the claim;

(c) require further evidence in support of the claim or an item contained in it.

219. Bankruptcy trustee to give creditor notice of grounds of rejection

As soon as practicable after rejecting a creditor's claim, or a part of it, the bankruptcy trustee shall give the creditor a notice rejecting the claim or part and specifying the grounds for the rejection.

220. Bankruptcy trustee's power to obtain evidence of debt

(1) The bankruptcy trustee may summon for examination, and examine (on oath or otherwise), any of the following persons:

(a) a person who has submitted a creditor's claim;

(b) a person who has made a declaration or statement as part of a creditor's claim;

(c) a person who is capable of giving evidence concerning a creditor's claim or the debt to which the claim relates.

(2) If a person who has been summoned under this section fails to attend, or attends but refuses to be sworn or give evidence, and has no reasonable excuse for doing so, the Court, on the bankruptcy trustee's application may—

(a) may issue a warrant directing the person to be arrested and brought before the Court for examination; and

(b) if the Court believes that the person's evidence was relevant to deciding whether a creditor's claim should be allowed or rejected—make an order directing the person to pay all or a specified part of the expenses attributable to the arrest and examination.

221. Notice by bankrupt or creditor to bankruptcy trustee to allow or reject creditor's claim

(1) The bankrupt or any creditor may give the bankruptcy trustee notice to allow or reject a creditor's claim.

(2) If the bankruptcy trustee has not made a decision allowing or rejecting the creditor's claim within fourteen days after receiving the claim, the creditor or the bankrupt may apply to the Court for an order under subsection (3).

(3) On the hearing of an application made under subsection (2), the Court shall—

(a) if it finds the claim to be substantiated or partly substantiated—make an order allowing the claim or partly allowing the claim; or

(b) if it finds that the claim is wholly or partly unsubstantiated—make an order rejecting or partly it,

and in either case may make such other order of an ancillary nature as it considers appropriate.

222. Court may cancel creditor's claim

(1) The Official Receiver, the bankrupt or a creditor may make an application to the Court for an order under subsection (2) on the ground that the bankruptcy trustee improperly allowed a creditor's claim.

(2) On the hearing of an application made under subsection (1), the Court may make an order cancelling the creditor's claim or reducing the amount claimed, if it considers that the claim was improperly allowed or was improperly allowed in part.

223. Power of court to quash or vary bankruptcy trustee's decision rejecting creditor's claim

(1) A creditor whose claim has been rejected by the bankruptcy trustee may apply to the Court to make an order under subsection (3).

(2) An application can be made only within twenty-one days after the creditor receives the bankruptcy trustee's notice of rejection of the claim, or within such extended period as the Court may allow.

(3) On the hearing of an application made under subsection (1), the Court shall—

(a) if it considers that the bankruptcy trustee's decision was wholly justified—confirm the decision; or

(b) if it considers that the decision was only partly justified—confirm the decision as to that part and quash the rest of the decision,

but if it considers that the decision was wholly unjustified, it shall quash the decision.

(4) A creditor has no right to prove for a debt that has been rejected by the bankruptcy trustee, unless the creditor has made an application under this section.

224. Parties to proceedings relating to creditor's claim

(1) This section applies to an application made under section 221, 222 or 223.

(2) If the applicant is not the bankruptcy trustee, the applicant shall serve a copy of the application on the bankruptcy trustee as a party to the proceeding.

(3) If the applicant is not the bankrupt or a creditor who is affected by the decision of the bankruptcy trustee, the applicant shall serve a copy of the application on the bankrupt or that creditor.

(4) On being served with a copy of the application, the bankrupt or creditor may give notice to the Court that the bankrupt or creditor wishes to appear and be heard at the hearing and, on doing so, becomes a party to the proceeding.

225. Court may make order as to costs

On the hearing of an application made under section 221, 222 or 223, the Court may, if it considers it appropriate to do so, make an order—

(a) directing specified costs of a creditor to be added to the creditor's claim;

(b) directing specified costs of a party to the proceeding to be paid out of the bankrupt's estate; or

(c) directing specified costs to be paid by a specified party to the proceedings (other than the bankruptcy trustee).

226. Secured creditor's options in relation to property that is subject to a charge

(1) If the property of a bankrupt is subject to a charge, the creditor who holds the charge may choose an option specified in subsection (2).

(2) The options are as follows:

(a) Option 1: to realise the property by having it sold (but only if the creditor is entitled to do so under the terms of the charge); or

(b) Option 2: to have the property valued and prove in the bankruptcy as an unsecured creditor for the balance due (if any) after deducting the amount of the valuation;

(c) Option 3: to surrender the charge to the bankruptcy trustee for the general benefit of the creditors and prove in the bankruptcy as an unsecured creditor for the whole debt.

(3) The bankruptcy trustee may, at any time by notice, require a creditor who holds a charge over a bankrupt's property—

(a) within thirty days after receipt of the notice, to choose one of the options specified in subsection (2); and

(b) if the creditor chooses option 2 or option 3 – to exercise the chosen option within that period.

(4) A creditor who, having been served with a notice under subsection (1), fails to comply with the notice is taken to have surrendered the charge to the bankruptcy trustee under option 3 for the general benefit of the creditors, in which case the creditor may prove as an unsecured creditor for the whole debt.

(5) This section is subject to section 227.

227. Power of Court to order disposal of property that is subject to a charge

(1) If property of a bankrupt is subject to a security, the bankruptcy trustee may make an application to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order enabling the bankruptcy trustee to dispose of the property as if it were not subject to the security, but only if it is satisfied that the disposal of the property would be likely to provide a better overall outcome for the creditors of the bankrupt.

(3) An order under subsection (2) is subject to the condition that the bankruptcy trustee apply towards discharging the amounts secured by the security—

(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 that would be realised on a sale of the property at market value.

(4) If an order under subsection (2) relates to more than one security, the bankruptcy trustee shall apply the money from the disposal in the order of the priorities of the securities.

(5) Within fourteen days after an order is made under subsection (2), the bankruptcy trustee shall lodge a copy of the order with the Official Receiver for recording in the public register kept under Division 2 of Part XII.

(6) A bankruptcy trustee who, without reasonable excuse, fails to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

228. Realisation of property that is subject to a security

(1) A creditor who realises property that is subject to a charge may prove as an unsecured creditor for any balance due after deducting the net amount realised.

(2) However, subsection (1) does not apply if the bankruptcy trustee has accepted a valuation and creditor's claim under section 231.

(3) A secured creditor who realises property subject to a charge shall account to the bankruptcy trustee for any surplus remaining after the following amounts have been paid:

(a) the amount of the debt;

(b) interest payable on the debt up to the time when it is paid;

(c) any proper payments to the holder of any other charge over the property.

229. Valuation of charge held by creditor and claim for balance due

(1) This section applies if a creditor who holds a charge or security right over a bankrupt's property has the property valued and seeks to prove as an unsecured creditor for the balance due after deducting the amount of the valuation.

(2) The creditor shall ensure that the valuation and the claim for the balance—

(a) is made in the prescribed creditor's claim form;

(b) contains full particulars of the valuation and the debt;

(c) contains full particulars of the charge (including the date when it was given) or a copy of the registration with respect to a security right; and

(d) identifies the documents (if any) that substantiate the debt and the charge or security right.

(3) If required to do so by the bankruptcy trustee, the creditor shall produce for inspection the documents so identified.

(4) Failure to comply with subsection (2), or with a requirement of the bankruptcy trustee under subsection (3), renders the creditor's claim invalid.

[Act No. 13 of 2017, Sch.]

230. Offence for secured creditor to make false claim

(1) A person who—

(a) makes, or authorises the making of, a claim under section 229 (1) knowing it to be false or misleading; or

(b) omits, or authorises the omission of, any matter from a claim under section 229 (1) knowing that the omission will make the claim false or misleading, commits an offence

(2) A person who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

231. Bankruptcy trustee's powers when secured creditor values property subject to charge and proves for balance

(1) If a creditor who holds a charge or security right over property of a bankrupt values the property and seeks to prove for the balance due, the bankruptcy trustee shall—

(a) accept the valuation and the creditor's claim; or

(b) reject the valuation and creditor's claim in whole or in part.

(2) Within fourteen days after receiving a notice of rejection of the creditor's valuation and claim, the creditor may submit to the bankruptcy trustee a revised valuation and creditor's claim.

(3) If the bankruptcy trustee subsequently finds that a decision rejecting a valuation and creditor's claim was wrong, the bankruptcy trustee may revoke or amend the decision.

(4) If the bankruptcy trustee accepts the valuation and creditor's claim, the bankruptcy trustee may, at any time before the creditor realises the property, redeem the charge or collateral subject to a security right by paying the amount of the valuation to the creditor.

(5) For the purpose of subsection (4), the bankruptcy trustee accepts the valuation and creditor's claim if the bankruptcy trustee—

(a) accepts the original or an amended valuation and creditor's claim; or

(b) accepts a valuation and creditor's claim after amending or revoking a decision to reject a valuation and creditor's claim.

[Act No. 13 of 2017, Sch.]

232. Secured creditor who surrenders charge may with approval of the Court withdraw claim or submit a new claim

(1) This section applies to a creditor who has surrendered a charge under option 3 in section 226(2) or is taken to have surrendered the charge under section 226(4).

(2) The creditor may, with the approval of the Court or the bankruptcy trustee and subject to the terms that the Court or that trustee imposes—

(a) withdraw the surrender and rely on the charge; or

(b) submit a new creditor's claim under this Division.

(3) Subsection (2) does not apply if the bankruptcy trustee has already realised the property that is subject to the charge.

233. Bankruptcy trustee may estimate amount of uncertain creditor's claim

If a creditor's claim is subject to a contingency or is for damages, or if, for some other reason, the amount of the claim is uncertain, the bankruptcy trustee may estimate the amount of the claim.

234. Application to the Court to determine amount of uncertain creditor's claim

(1) If the bankruptcy trustee—

(a) chooses not to estimate the amount of a creditor's claim in accordance with section 233; or

(b) has estimated the amount of the claim but the creditor is dissatisfied with the estimate,

the creditor may apply to the Court to make an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court shall make an order determining the amount of the creditor's claim.

(3) The bankruptcy trustee is entitled to be served with a copy of the application and, at the hearing of the application, to appear and be heard as respondent.

235. Creditor's claim payable six months or more after commencement of bankruptcy

(1) A creditor's claim that would, but for the bankruptcy, be payable six months or more after the commencement of the bankruptcy is taken to be a claim for the present value of the debt.

(2) The present value of the debt is to be calculated by deducting interest at the rate prescribed by the insolvency regulations for the period from the date on which the bankruptcy commenced to the date when the debt would be payable.

236. Bankruptcy trustee's duty when mutual dealings have occurred between the bankrupt and other persons

(1) If there have been mutual credits, mutual debts or other mutual dealings between a bankrupt and another person, the bankruptcy trustee shall—

(a) take an account of what is due from the one party to the other in respect of those credits, debts or dealings;

(b) set-off an amount due from one party to the other against an amount due from the other party; and

(c) allow only the balance of the account to be proved in the bankruptcy.

(2) However, a person may not claim the benefit of a set-off against an amount due from the bankrupt if, at the time when the credit was given to the bankrupt, the person knew or had reason to know that the bankrupt was insolvent.

(3) A creditor of the bankrupt who claims a set-off shall declare in the creditor's claim form that, at the time when the creditor gave the bankrupt credit, the creditor did not know and had no reason to know that the bankrupt was insolvent.

(4) The bankruptcy trustee shall reject a claim form that does not comply with subsection (3).

237. Creditor may claim pre-bankruptcy interest

A creditor may claim interest up to the date on which the bankruptcy commences—

(a) in the case of contract debt interest – at the rate specified in the contract that provides for interest on the debt; or

(b) in the case of judgment debt interest – at the rate payable on the debt.

238. Post-bankruptcy interest payable at prescribed rate if surplus remains

(1) The bankruptcy trustee shall pay interest on all allowed creditors' claims at the prescribed rate if surplus assets remain after the bankruptcy trustee has paid the claims.

(2) The bankruptcy trustee shall pay the interest from and including the date on which the bankruptcy commences to the date on which the debt is paid.

(3) If the surplus is not enough to pay the interest in full on all debts, payment of the interest is to abate rateably among those debts.

Example:

A and B are the only creditors of the bankrupt, C. A's contract with C provided for interest of 20 percent but B's contract did not provide for interest. C's bankruptcy commenced on 1 July 2015. At that date – (1) C owed K.Sh100, 000 plus $10,000 contractual debt interest; and (2) C owed B K.Sh$200,000 but no interest. A can prove in the bankruptcy for $110,000 and B for KS200, 000. The bankruptcy trustee pays their claims in full on 1 July 2014, twelve months after the commencement of the bankruptcy. If there are surplus assets after the bankruptcy trustee has paid the claims of A and B in full, the bankruptcy trustee has to use the surplus to pay interest on both debts for the period from 1 July 2015 to 1 July 2014. If there is enough, and assuming that the prescribed rate is 10 percent, the bankruptcy trustee has to pay A K.Sh11,000 and B KS20,000 in post-the bankruptcy interest. Assume that the bankruptcy trustee has a surplus of only K.Sh15, 500. In that case A and B share pro rata, so that A is paid K.Sh5, 500 in post-the bankruptcy interest, and B is paid $10,000.

239. Additional post-bankruptcy interest on contract or judgment debt if surplus remains

(1) If there is a surplus after the bankruptcy trustee has paid post-bankruptcy interest as provided by section 238, the bankruptcy trustee shall pay additional interest on allowed proofs for a contract debt or judgment debt, by making up—

(a) in the case of a contract debt—the difference between the prescribed rate and the rate specified in the contract; and

(b) in the case of a judgment debt—the difference between the prescribed rate and the rate payable on the debt.

(2) The bankruptcy trustee shall pay the additional interest from and including the date on which the bankruptcy commenced to the date on which the creditor's claim is paid.

(3) If the surplus is not enough to pay the additional interest in full on the creditors' claims that are eligible for that interest, payment of the interest is to abate rateably among those claims.

240. Meaning of prescribed rate for purposes of sections 238 and 239

For the purposes of sections 238 and 239, the prescribed rate of interest is the rate for the time being prescribed by the insolvency regulations for the purposes of those sections.

241. Creditor required to deduct trade discounts

A creditor shall deduct from the creditor's claim any trade discount that the creditor would have given a debtor if the debtor had not become bankrupt.

242. Secured creditor can prove as unsecured creditor if security is void or partly void

If a creditor's security over assets of the bankrupt is wholly or partly void under a provision of this or any other Act, the creditor may prove as an unsecured creditor—

(a) if the security is wholly void—for the whole of the debt; or

(b) if the security is partly void—to the extent that the debt is unsecured.

243. Judgment creditor may prove for costs

A person who obtained an order for costs against the bankrupt before the commencement of the bankruptcy may prove for the amount of those costs even if that amount is not fixed until after that commencement.

244. Company may prove for unpaid calls

(1) If a bankrupt is, at the commencement of the bankruptcy, a shareholder of a company (not being a company that is in liquidation), the company may prove for—

(a) the amount of unpaid calls on the bankrupt made before that commencement in respect of the bankrupt's shares; and

(b) the value of the liability to calls to be made during the twelve-month period after that commencement.

(2) The value referred to in subsection (1)(b) is to be estimated—

(a) as agreed by the bankruptcy trustee and the company; or

(b) if the bankruptcy trustee and the company cannot agree—as directed by the Court.

245. When guarantor for bankrupt may prove claim

(1) If, in relation to a bankruptcy—

(a) a person is, at the commencement of the bankruptcy, a guarantor of, or is otherwise liable for a debt of, the bankrupt; and

(b) the person discharges the debt or liability (before or after that commencement),

the person is entitled to the benefit to subsection (3) or (4), whichever is applicable to the person.

(3) If the creditor of the bankrupt has submitted a creditor's claim for the debt or liability, the person may stand in the creditor's place in respect of the claim.

(4) If the creditor has not submitted a creditor's claim form for the debt or liability —

(a) the person may prove for the payment that the person has made as if the payment were a debt, without disturbing dividends already paid to the creditor in the bankruptcy; and

(b) if the person does so, the person is entitled to receive dividends paid subsequently.

Division 21 — Distribution of bankrupt's estate

246. Interpretation: Division 21

In this Division, "preferential claim" means a claim in respect of a debt listed in paragraph 2, 3 or 4 of the Second Schedule.

247. Preferential debts: priority of debts

(1) For the purpose of this Act, a bankrupt's preferential debts are those specified in paragraphs 2 to 4 of the Second Schedule and are payable as provided by that Schedule in priority to the bankrupt's other debts.

(2) Debts of the bankrupt that are neither preferential debts nor debts to which section 248 applies also rank equally between themselves and, after the preferential debts, are payable in full unless the bankrupt's estate is insufficient to satisfy them, in which case they abate in equal proportions among themselves.

(3) Any surplus remaining after the payment of the debts referred to in subsection (2) is to be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy.

(4) Interest on preferential debts ranks equally with interest on debts that are not preferential debts.

(5) The rate of interest payable under subsection (4) in respect of a debt is the rate for the time being prescribed by the insolvency regulations for the purposes of this section.

(6) Neither this section nor section 248 limits the effect of a provision of any written law under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, given a particular priority or required to be postponed.

(7) If, before the commencement of the bankruptcy, a creditor agrees to accept a lower priority in respect of a debt than it would otherwise have under this section, nothing in this section or the Second Schedule prevents the agreement from having effect according to its terms.

248. Priority ranking of debts owed to bankrupt's spouse

(1) This section applies to bankruptcy debts owed in respect of credit provided by a person who was the bankrupt's spouse at the commencement of the bankruptcy and so applies even if the person was not the bankrupt's spouse at the time the credit was provided.

(2) Those debts—

(a) rank in priority after the debts and interest required to be paid in accordance with section 247(3) and (4), and

(b) are payable with interest at the rate specified in section 247(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy.

(3) The interest payable under subsection (2)(b) has the same priority as the debts on which it is payable.

249. Person who makes payment on account of preferential creditor to be subrogated to the rights of that creditor

If a payment has been made to a person on account of a preferential creditor out of money advanced by another person for that purpose, the other person has, in the bankruptcy, the same right of priority in respect of the money so advanced as the preferential creditor would have if the payment had not been made.

250. Priority given to landlord or other person who distrains on goods and effects of bankrupt

(1) If a landlord or other person has distrained on goods or effects of the bankrupt during the thirty day period before the bankruptcy commenced, the preferential claims are a first charge on the goods or effects so distrained, or the proceeds from their sale.

(2) However, if any money is paid to a claimant under that charge, the landlord or other person has the same rights of priority as that claimant.

251. Creditors to have priority over creditors of joint bankrupt

If a bankrupt is a partner of a firm, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm is not entitled to receive money obtained from the realisation of the bankrupt's separate property until the claims of all of the other creditors have been paid in full.

252. Final distribution of bankrupt's estate

(1) On realising the bankrupt's estate or so much of it as can be realised without needlessly protracting the bankruptcy trusteeship, the bankruptcy trustee shall give notice either—

(a) of an intention to declare a final dividend; or

(b) that no dividend, or further dividend, will be declared.

(2) The bankruptcy trustee shall include in the notice the prescribed information and a statement that requires all claims against the bankrupt's estate to be established by a final date specified in the notice.

(3) The Court may, on the application of any person, the Court may make an order postponing the final date.

(4) After the final date, the bankruptcy trustee shall—

(a) pay any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(b) if the bankruptcy intends to declare a final dividend—declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) After paying the interest referred to in section 238 and paying in full the claims referred to in section 237, the bankruptcy trustee shall pay any surplus to the bankrupt.

(6) Subsection (5) is subject to section 214.

253. Final meeting of creditors

(1) Subject to this section, if—

(a) it appears to the bankruptcy trustee that the administration of the bankrupt's estate in accordance with this Division is for practical purposes complete; and

(b) the bankruptcy trustee is not the Official Receiver, the bankruptcy trustee shall summon a final general meeting of the bankrupt's creditors.

(2) The final general meeting of the bankrupt's creditors shall—

(a) receive and consider the bankruptcy trustee's report of the administration of the bankrupt's estate; and

(b) determine whether the bankruptcy trustee should be released under section 77.

(3) The bankruptcy trustee may give the notice summoning the final general meeting at the same time as giving notice under section 252(1).

(4) If the final general meeting is summoned for an earlier date, the bankruptcy trustee shall adjourn the meeting (and, if necessary, further adjourn the meeting) until a date on which the bankruptcy trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(5) In the administration of the estate it is the bankruptcy trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the final general meeting.

(6) If—

(a) the bankrupt's estate property consists of or includes an interest in a dwelling house that is occupied by the bankrupt or the bankrupt's spouse or former spouse; and

(b) the bankruptcy trustee has for any reason been unable to realise that property,

the bankruptcy trustee may not summon a final general meeting unless one of the following has been satisfied:

(c) the Court has made an order under section 143 imposing a charge on that property for the benefit of the bankrupt's estate;

(d) the Court has declined, on an application under that section, to make such an order;

(e) the Attorney General has issued a certificate to the bankruptcy trustee stating that it would be inappropriate for such an application to be made.

Division 22 — Discharge of bankrupt from bankruptcy

254. Automatic discharge three years after bankrupt lodges statement of financial position

(1) A bankrupt is automatically discharged from bankruptcy three years after the bankrupt lodged a statement of the bankrupt's financial position in accordance with section 50, but may apply to be discharged earlier.

(2) However, a bankrupt is not automatically discharged if—

(a) the bankruptcy trustee or a creditor has objected under section 256 and the objection has not been withdrawn by the end of the three-year period referred to in subsection (1);

(b) the bankrupt has to be publicly examined in accordance with section 180 and has not completed that examination; or

(c) the bankrupt is undischarged from an earlier bankruptcy.

255. Effect of automatic discharge

The automatic discharge of the bankrupt has the same effect as if the Court made an order for the bankrupt's discharge.

256. Right of creditor to object to automatic discharge

(1) The bankruptcy trustee, the Official Receiver (if not the bankruptcy trustee) or, with the approval of the Court, a creditor may object to a bankrupt's automatic discharge.

(2) An objection has no effect unless it is made in the manner and form prescribed by the insolvency regulations.

257. Objection can be withdrawn

(1) An objection to the automatic discharge of the bankrupt may be withdrawn in the manner prescribed by the insolvency regulations.

(2) A bankrupt is automatically discharged on the withdrawal of the objection if—

(a) the three-year period referred to in section 254(1) has elapsed;

(b) there is no other objection to the discharge that has not been withdrawn; and

(c) neither section 254(2)(b) nor (c) applies.

258. Bankrupt may apply for early discharge

(1) A bankrupt may at any time apply to the Court for an order of discharge from bankruptcy.

(2) However, if the Court has previously refused an application by the bankrupt for a discharge, and has specified the earliest date when the bankrupt may again apply, the bankrupt may not make another application before that date.

(3) The Court shall hear an application made under subsection (1) in the manner prescribed by section 180.

259. When bankrupt is to be publicly examined before the Court concerning discharge

(1) The bankruptcy trustee shall summon the bankrupt to be publicly examined before the Court concerning the bankrupt's discharge if—

(a) the bankruptcy trustee or a creditor has objected to the bankrupt's automatic discharge and the objection has not been withdrawn;

(b) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy;

(c) the bankrupt has been required to be publicly examined in accordance with section 180 and has not completed that examination.

(2) The bankruptcy trustee shall summon the bankrupt as soon as practicable after the end of the three-year period referred to in section 254(1).

(3) The provisions of Division 17, so far as relevant, apply with any necessary modifications to a public examination under this section.

260. Bankruptcy trustee to lodge report with the Court in specified circumstances

(1) The bankruptcy trustee shall prepare a report and lodge it with the Court when—

(a) the bankrupt has applied under section 258 for a discharge; or

(b) the bankruptcy trustee has summoned the bankrupt to be examined in accordance with section 259.

(2) The bankruptcy trustee shall include in the report a comprehensive review of—

(a) the bankrupt's affairs;

(b) the causes of the bankruptcy;

(c) the bankrupt's performance of the bankrupt's responsibilities under this Act;

(d) the manner in which, and the extent to which, the bankrupt has complied with orders of the Court;

(e) the bankrupt's conduct before and after the commencement of the bankruptcy; and

(f) any other matter that is likely to assist the Court in making a decision as to whether or not to discharge the bankrupt.

261. When creditor required to give notice of opposition to discharge

(1) A creditor shall give to the bankruptcy trustee and the bankrupt a notice that complies with subsection (2) if the creditor intends to oppose the bankrupt's discharge on a ground that is not mentioned in the bankruptcy trustee's report.

(2) A notice complies with this subsection if it—

(a) specifies the ground or grounds for opposing the discharge; and

(b) is given within the period prescribed by the insolvency regulations for the purposes of this section.

262. Power of the Court to grant or refuse discharge

(1) On hearing an application made under section 258, or the holding of a public examination of the bankrupt under section 259, the Court may—

(a) immediately discharge the bankrupt;

(b) discharge the bankrupt on conditions;

(c) discharge the bankrupt but suspend the order for a specified period; or

(d) discharge the bankrupt, with or without conditions, at a specified future date,

or may refuse to make an order of discharge, in which case the Court may specify the earliest date when the bankrupt may reapply for discharge.

(2) The conditions referred to in subsection (1)(b) may include a condition that the bankrupt consents to a judgment or order for the payment of any sum of money.

(3) If 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 to such extent as it considers appropriate.

263. Court may restrict bankrupt from engaging in business after discharge

(1) On making an order of discharge or at any earlier time, the Court may prohibit the bankrupt from doing after discharge all or any of the following without the Court's approval:

(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 a company or a partner of a firm or limited liability partnership;

(c) directly or indirectly being concerned, or taking part, in the management of any company or limited liability partnership;

(d) being employed by a relative of the bankrupt;

(e) being employed by a company, trust or other body that is managed or controlled by a relative of the bankrupt.

(2) The Court may impose such a prohibition for a specified period, or without specifying a time limit.

(3) The Court may at any time vary or cancel a prohibition imposed under this section.

264. Court may quash order discharging bankrupt

(1) The bankruptcy trustee or a creditor of the bankrupt may make an application to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order quashing the discharge of a bankrupt at any time before—

(a) in the case of an absolute discharge—two years after the discharge; or

(b) in the case of a discharge that is conditional or suspended—two years after the discharge has taken effect.

(3) The Court may make an order quashing a discharge only if it is satisfied that facts have been established that—

(a) were not known to it when it made the order of discharge; and

(b) had it known of them, would have justified it in refusing a discharge or in imposing conditions in respect of the discharge.

(4) The Court may not make an order quashing a discharge if the facts relied on by the applicant, at the time when it 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) If the Court makes an order quashing a discharge, it may then, or at any time afterwards, make a new order of discharge.

(6) Such an order may be absolute, be suspended for a specified period or be made subject to conditions.

(7) The Court may not hear an application made under subsection (1) unless it is satisfied that the bankrupt has been given notice of the application (including the grounds relied on by the applicant).

265. Effect of quashing order discharging bankrupt from bankruptcy

(1) The quashing of a discharge does not affect the rights or remedies that a person other than the bankrupt would have had if the discharge had not been quashed.

(2) If property acquired by the bankrupt after discharge is owned by the bankrupt at the date when the order quashing the discharge is made, the property vests in the bankruptcy trustee subject to any securities or other encumbrances.

(3) The bankruptcy trustee shall apply any such property in paying the debts that the bankrupt has incurred since the date of discharge.

266. Bankrupt may apply for absolute discharge on ground that conditions of discharge are too onerous

(1) A bankrupt may apply to the Court for an absolute discharge even though the bankrupt is not able to comply with any or all of the conditions of the bankrupt's discharge.

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

267. Debts from which bankrupt is released on discharge

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

(2) The debts from which the bankrupt is not released are the following:

(a) any debt or liability incurred by fraud or fraudulent breach of trust to which the bankrupt was a party;

(b) any debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;

(c) any judgment debt or amount payable under any order for which the bankrupt is liable under section 150 or 262;

(d) amounts payable under a Court order made under the Matrimonial Causes Act;

(e) amounts payable under the Children Act.

268. Discharge to be conclusive evidence of bankruptcy and validity of bankruptcy proceedings.

A discharge of a bankrupt from bankruptcy is conclusive evidence of the bankruptcy and of the validity of the proceedings in course of the bankruptcy.

269. Discharge not to release partners of bankrupt and others

The discharge of a bankrupt does not release a person who, at the commencement of the bankruptcy, was—

(a) a business partner of the bankrupt;

(b) a co-trustee with the bankrupt;

(c) jointly bound or had made any contract with the bankrupt; or

(d) a guarantor or in the nature of a guarantor of the bankrupt.

270. Discharged bankrupt to assist bankruptcy trustee

(1) A person who is discharged from bankruptcy shall assist the bankruptcy trustee, as required by the Court or the bankruptcy trustee, in the realisation and distribution of the property of the person that is vested in that trustee.

(2) If a person who has been discharged from bankruptcy fails to comply with subsection (1), the Court may, on the application of the bankruptcy trustee, order the person to provide the bankruptcy trustee with such assistance as is specified in the order.

271. Official Receiver to record in public register decision of the Court refusing to discharge bankrupt, etc

If the Court refuses to discharge a bankrupt or makes an order discharging the bankrupt but suspends the discharge, the Official Receiver shall record that information in the relevant public register kept the Official Receiver under Division 2 of Part XII.

Division 23 — Annulment of bankruptcy orders

272. Court may annul bankruptcy order in certain circumstance

(1) The Official Receiver or any other person claiming to have a legitimate interest in the matter may make an application to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may annul a bankruptcy order made in respect of a bankrupt if—

(a) on reconsideration it finds that the bankrupt should not have been adjudged bankrupt;

(b) it is satisfied that the bankrupt's debts have been fully paid or satisfied and that the bankruptcy trustee's fees and costs incurred in the bankruptcy have been paid;

(c) it considers that the liability of the bankrupt to pay the bankrupt's debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the bankruptcy commenced; or

(d) it has approved a deed of composition under Division 24 of Part III or a voluntary arrangement under Division 1 of Part IV.

(3) If an application is made by an applicant other than the Official Receiver on one of the grounds specified in subsection (2)(a) to (c)—

(a) the applicant shall serve a copy of the application on the Official Receiver in the manner and within the period directed by the Court; and

(b) on being served with a copy of the application—the Official Receiver is entitled to appear at the hearing of the application as a party to the proceeding.

(4) A bankruptcy order is annulled—

(a) in the case of an application made on the ground specified in subsection (2)(a)—from the time when it was made; or

(b) in the case of an application made on one of the grounds specified in subsection (2)(b) to (d)—from the time when the Court made the order of annulment.

(5) If an application for annulment is made on the ground that the bankrupt should not have been adjudged bankrupt because of a defect in form or procedure, the Court may, in addition to annulling the bankruptcy order, exercise its powers under section 696 to correct the defect and order that the bankruptcy application be reheard as if no bankruptcy order had been made.

(6) If a bankruptcy order is annulled on one of the grounds specified in subsection (2)(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 Official Receiver shall pay that amount into the Consolidated Fund or into some other public account prescribed by the insolvency regulations for the purposes of this section; and

(c) the Official Receiver is not entitled to remuneration under section 710 for those services.

273. When Official Receiver may annul bankruptcy order

(1) The Official Receiver may annul a bankruptcy order on any of the grounds specified in subsection (2), but only if the order was made on a debtor's application.

(2) The grounds for annulment by the Official Receiver are as follows:

(a) that the Official Receiver considers that the bankrupt should not have been adjudged bankrupt;

(b) that the Official Receiver is satisfied that the bankrupt's debts have been fully paid or satisfied and that the bankruptcy trustee's fees and costs incurred in the bankruptcy have been paid;

(c) that the Official Receiver considers that the liability of the bankrupt to pay the bankrupt's debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the bankruptcy commenced;

(d) that the Court has approved a deed of composition under Division 24 of Part III or a voluntary arrangement under Division 1 of Part IV.

(3) The Official Receiver may annul the bankruptcy order on the application of any person interested or on the Official Receiver's own initiative.

(4) The annulment of bankruptcy order under subsection (3) takes effect—

(a) in the case of an application on the ground specified in subsection (2)(a)—from the time when the order was originally made; and:

(b) in the case of an application on one of the grounds specified in subsection (2)(b) to (d)—from the time of the Official Receiver's order of annulment.

274. Effect of annulment of bankruptcy order

(1) On annulment of a bankruptcy order, all property of the bankrupt vested in the Official Receiver on bankruptcy and not sold or otherwise disposed of by the Official Receiver revests in the bankrupt without the need for a transfer.

(2) A contract, sale, disposition or payment duly made, or any action duly taken by the Official Receiver before the annulment—

(a) is not affected as to its validity by the annulment; and

(b) has effect as if no bankruptcy order had been made in respect of the bankrupt.

Division 24 — Composition during bankruptcy

275. Interpretation: Division 24

In this Division—

"confirming resolution" means a special resolution passed by a bankrupt's creditors in accordance with section 276 confirming a preliminary resolution;

"preliminary resolution" means a special resolution passed by a bankrupt's creditors in accordance with section 276.

276. Creditors may accept composition by passing preliminary resolution

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

(2) If there is more than one class of creditors, the delay of one class in accepting, or the failure of one class to accept, does not prevent any other of the classes from accepting the composition.

277. Composition not effective unless approved by confirming resolution

(1) A composition is ineffective only when the creditors have passed a special resolution confirming the preliminary resolution.

(2) In the confirming resolution, the creditors may vary the terms of the composition set out in the preliminary resolution, if the terms as varied are at least as favourable to the creditors as those set out in the preliminary resolution.

(3) The notice of the meeting convened to pass the confirming resolution is ineffective unless it—

(a) states generally the terms of the proposal for composition; and

(b) is accompanied by a report by the Official Receiver on that proposal.

(4) If the proposal for composition provides for the payment in full of all creditors whose respective debts do not exceed a specified amount, that class of creditors is not to be counted either in number or value for the purpose of counting the requisite majority of creditors for passing the confirming resolution.

278. Compositions with members of partnership

(1) If members of a partnership have been adjudged bankrupt, the joint creditors and each class of separate creditors can make separate compositions.

(2) If subsection (1) applies, the majorities of creditors required for passing the confirming resolution are the separate majorities of each class, but with that exception the joint and separate creditors are to be counted as one body for voting purposes.

279. Composition not binding unless approved by the Court

(1) A composition is not binding until it is approved by the Court.

(2) When approved by the Court, a composition binds all the creditors in respect of provable debts due to them by the bankrupt.

(3) The Court may refuse to approve a composition if it finds that—

(a) section 276 or 277;

(b) the terms of the composition are not reasonable or are not calculated to benefit the general body of creditors;

(c) the bankrupt is guilty of misconduct that justifies the Court in refusing, qualifying, or suspending the bankrupt's discharge; or

(d) for any other reason it should not approve the composition.

(4) The Court may not approve a composition if the composition does not provide for the payment, before any other debts are paid, of those debts that have priority under the Second Schedule.

(5) The Court's approval is conclusive as to the validity of the composition.

280. Procedure for court approval of composition

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

(2) The Court may hear the application only if satisfied that each creditor who has submitted a claim in the bankruptcy has been given notice of it.

(3) Before approving the composition, the Court shall—

(a) receive and consider a report by the Official Receiver regarding the terms of the composition and the bankrupt's conduct; and

(b) hear any objection by or on behalf of a creditor.

(4) When it approves the composition, the Court may correct any formal or accidental error or omission, but may not alter the substance of the composition.

281. Deed of composition to be executed

(1) As soon as practicable after the Court has approved a composition—

(a) the bankrupt and the Official Receiver shall execute a deed of composition for putting the proposal into effect; and

(b) the Official Receiver shall apply to the Court for confirmation of the deed.

(2) If it is satisfied that the deed conforms with the composition that it has earlier approved, the Court shall—

(a) direct that the deed be lodged in the Court; and

(b) on lodgement of the deed—quash the relevant bankruptcy order.

(3) The deed may not be entered and lodged in the Court unless the prescribed commission has been paid to the Official Receiver.

(4) The quashing under subsection (2) does not revest the bankrupt's property in the bankrupt in accordance with section 274(1).

282. Effect of deed of composition

When the Court has confirmed the deed and quashed the bankruptcy order—

(a) the deed binds all the creditors in all respects as if they had each executed the deed; and

(b) subject to the provisions of the Land Registration Act, 2012 (No. 3 of 2012) – the bankrupt's property to which the deed relates vests, and is to be dealt with, as provided by the deed.

283. Bankrupt remains liable for unpaid balances of certain debts

(1) A bankrupt who makes a composition with the bankrupt's creditors remains liable for the unpaid balance of a debt if—

(a) the bankrupt, by means of fraud—

(i) incurred or increased the debt; or

(ii) on or before the date of the composition, obtained forbearance on the debt; and

(b) the creditor who has been defrauded has not agreed to the composition.

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

284. Deadlines for steps to approve composition and execute deed

(1) The deadlines for steps to approve the composition and execute the deed are as follows:

(a) the confirming resolution has to have been passed within one month after the preliminary resolution is passed;

(b) the Court has to have approved the composition within one month after the confirming resolution is passed;

(c) the bankrupt has to have executed the deed of composition within seven days after the Court approves the composition or, if the Court allows the bankrupt additional time, within that time.

(2) If a deadline is not met immediately on the expiry of the deadline—

(a) the bankruptcy proceedings resume as if there had been no confirming resolution; and

(b) none of the periods specified in subsection (1) counts for the purpose of calculating a period of time for a purpose of this Act.

285. Procedure following approval of composition by the Court

(1) The Registrar of the Court shall, after recording the deed of composition—

(a) endorse on the deed that it has been recorded in the Court registry; and

(b) if requested to do so by the Official Receiver—deliver the deed to the Official Receiver.

(2) As soon as practicable after the deed has been recorded in the Court registry, the Official Receiver shall—

(a) take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate public registry or office; and

(b) then return the deed to the Registrar of the Court.

(3) The Official Receiver shall, subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition of—

(a) the bankrupt's property; or

(b) so much of the bankrupt's property as is under the control of the Official Receiver and that under the composition revests in the bankrupt or the bankruptcy trustee.

286. How composition may be enforced

(1) On the application of any person aggrieved by a failure to pay an amount payable in accordance with a composition approved by the Court, the Court may order that the failure to pay be remedied.

(2) On the application of a person who claims to have an interest in a composition approved by the Court, the Court may make an order enforcing the provisions of a composition.

287. Jurisdiction of the Court in relation to composition and deed of composition

(1) After the preliminary resolution has been passed, the Court continues to have exclusive jurisdiction in relation to the composition and the deed of composition, and their administration.

(2) On an application in relation to the composition, the deed of composition, or their administration, the Court—

(a) for the purpose of summoning and examining the bankrupt and witnesses-may direct the proceeding as if it were a proceeding under Division 17; and

(b) may make such order or orders as it considers appropriate, including an order as to the costs of the application.

288. Law and practice in bankruptcy to apply to deed of composition

The Court shall decide a question arising under a deed of composition according to the law and practice of bankruptcy, in so far as that law and practice is relevant.

Division 25 – Bankruptcy offences

289. Offences in relation to debts

(1) A bankrupt commits an offence if the bankrupt did not, when contracting a debt, have the capacity to pay the debt when it fell due for payment, as well as to pay all the bankrupt's other debts.

(2) A bankrupt commits an offence if the bankrupt has materially contributed to, or increased the extent of, the bankrupt's insolvency—

(a) by gambling;

(b) by engaging in rash and hazardous speculation;

(c) by unjustifiable spending; or

(d) by living extravagantly.

(3) In proceedings for an offence under subsection (1) or (2), it is a defence to prove that, at the relevant time, the bankrupt had no intention to defraud.

290. Offences in relation to property

(1) A bankrupt commits an offence if the bankrupt—

(a) conceals, or removes from Kenya, any part of the bankrupt's property —

(i) during the two months immediately preceding the date on which an unsatisfied judgment or order for payment of money was made against the bankrupt; or

(ii) at any time after such a judgment or order was made; or

(b) with intent to defraud any of the bankrupt's creditors—

(i) makes or causes to be made a gift, delivery or transfer of any part of the bankrupt's property; or

(ii) gives or causes to be given a charge over any part of that property.

(2) A bankrupt commits an offence if, during the two years immediately preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made, the bankrupt —

(a) conceals any part of the bankrupt's property to the value of fifty thousand shillings or more;

(b) conceals any debt due to the bankrupt or due from the bankrupt; or

(c) fraudulently moves any part of the bankrupt's property to the value of fifty thousand shillings or more.

(3) In proceedings for an offence under subsection (1)(a), it is a defence to prove that, at the relevant time, the bankrupt had no intention to defraud any of the bankrupt's creditors.

(4) In proceedings for an offence under subsection (2)(a) or (b), it is a defence to prove that, at the relevant time, the bankrupt had no intention to defraud.

291. Offence in relation to written statement to creditor, etc

(1) A bankrupt commits an offence if, during the three years immediately preceding the time when the bankruptcy order was made in respect of the bankrupt, the bankrupt makes or produces to a material person a written statement of the bankrupt's financial position that contains information that is false or misleading.

(2) The following persons are material persons for the purposes of subsection (1):

(a) a person who is at the relevant time the bankrupt's creditor;

(b) a person who becomes the bankrupt's creditor as a result of the statement being made or produced to the person.

(3) In proceedings for an offence under subsection (1), it is a defence to prove that at the relevant time the bankrupt had no intention to deceive.

292. Offence in relation to documents, etc

(1) A bankrupt commits an offence if, during the two years immediately preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made, the bankrupt —

(a) conceals, destroys, mutilates or falsifies, or is a party to the concealment, destruction, mutilation or falsification of, any document affecting, or relating to, the bankrupt's conduct, affairs or property;

(b) makes, or is a party to the making of, any false entry in any document affecting, or relating to, the bankrupt's conduct, affairs or property;

(c) fraudulently parts with, alters, or makes any omission in, or is a party to fraudulently parting with, altering, or making an omission in, any document affecting, or relating to, the bankrupt's conduct, affairs or property; or

(d) prevents the production of any document relating to the bankrupt's conduct, affairs or property to any person to whom the bankrupt has an obligation under this Part to produce the document.

(2) In proceedings for an offence under subsection (1)(a), (b) or (d), it is a defence to prove that, at the relevant time, the bankrupt had no intention to conceal the state of the bankrupt's affairs or to defeat the law.

293. Offence in relation to fictitious losses or expenses

A bankrupt commits an offence if, during the twelve months immediately preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made, the bankrupt attempts to account for any part of the bankrupt's property by means of fictitious losses or expenses.

294. Offences in relation to credit, etc

(1) A bankrupt commits an offence if, during the three years preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made—

(a) the bankrupt obtains property on credit and has not paid for the property; and

(b) the bankrupt obtains the property—

(i) by making a false representation or doing some other fraudulent act;

(ii) by falsely stating the position of the bankrupt's financial affairs; or

(iii) under the false pretence of carrying on business and dealing in the ordinary course of trade.

(2) A bankrupt commits an offence if, during the three years immediately preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made, the bankrupt (otherwise than in the ordinary course of business) pawns, mortgages, creates a security right or disposes of any property that the bankrupt has obtained but for which the bankrupt has not made payment.

(3) In proceedings for an offence under subsection (1) or (2), it is a defence to prove that, at the relevant time, the bankrupt had no intention to defraud.

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295. Offences in relation to obtaining consent of creditors

A bankrupt commits an offence if the bankrupt—

(a) makes a false representation; or

(b) does any other fraudulent act,

for the purpose of obtaining the consent of any one or more of the bankrupt's creditors to any agreement with reference to the bankrupt's affairs or the bankrupt's bankruptcy.

296. Offence for bankrupt to leave Kenya without consent

(1) A bankrupt commits an offence if, during the twelve months immediately preceding the making of the application to the Court for a bankruptcy order in respect of the bankrupt, or at any time after the application was made, the bankrupt —

(a) leaves Kenya (either temporarily or permanently), together with any part of any property to the value of one hundred thousand shillings or more that, by law, ought to be distributed among the bankrupt's creditors;

(b) attempts to leave Kenya with any part of that property; or

(c) prepares to leave Kenya (either temporarily or permanently) while being in possession of any part of that property.

(2) In proceedings for an offence under subsection (1), it is a defence to prove that, at the relevant time, the bankrupt had no intention to defraud.

297. General penalties for bankruptcy offences

A bankrupt who is found guilty of an offence under a provision of sections 289 to 296 is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

298. Failure to keep and preserve proper record of transaction

(1) A bankrupt commits an offence if, at any time during the three years immediately preceding the date on which the bankrupt was adjudged bankrupt—

(a) the bankrupt had failed to keep and preserve a record of the bankrupt's transactions for the period; and

(b) because of the nature of the bankrupt's business or occupation, the bankrupt might reasonably be expected to have kept such a record.

(2) A bankrupt who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

299. Failure to keep proper records with intent to conceal

(1) A bankrupt commits an offence if, with intent to conceal the true state of the bankrupt's affairs, the bankrupt has failed to keep and preserve a proper record of the bankrupt's transactions.

(2) A bankrupt who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

300. When bankrupt presumed not to have kept or preserved proper records

(1) For the purposes of sections 298 and 299, a bankrupt is, in the absence of evidence to the contrary, presumed not to have kept a proper record of the bankrupt's transactions if, being engaged in a trade or business, the bankrupt has not kept the required records.

(2) For the purpose of subsection (1), the required records are those needed to explain the bankrupt's transactions and financial position in the bankrupt's trade or business, and includes—

(a) a record containing entries from day to day in sufficient detail of all cash received and cash paid;

(b) if the bankrupt's trade or business has involved dealing in goods—

(i) a record of all goods sold and purchased; and

(ii) detailed stock sheets of annual and other stock takings showing the quantity and the valuation made of each item of stock on hand; and

(c) if the bankrupt's trade or business has involved supplying services—details of those services.

(3) For the purposes of sections 298 and 299, a bankrupt is, in the absence of evidence to the contrary, presumed not to have preserved a proper record of the bankrupt's transactions if the bankrupt has not preserved—

(a) the records listed in subsection (2) (if applicable);

(b) a record of all goods purchased in the course of the bankrupt's business (with the original invoices); and

(c) a daily record of all goods sold on credit.

301. Offence by bankrupt in relation to management of companies

(1) A bankrupt who—

(a) acts or purports to act as a director of a company or as a partner of a firm or limited liability partnership; or

(b) fails without reasonable excuse to comply with section 152,

commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

302. Other bankruptcy offences

(1) A bankrupt commits an offence if the bankrupt—

(a) in the course of the administration of the bankrupt's affairs, makes to the bankruptcy trustee or the Official Receiver (if not the bankruptcy trustee) a statement that the bankrupt knows or has reason to know was false or misleading in a material respect;

(b) after becoming aware that any person has lodged a false proof in the bankruptcy, fails to disclose that fact immediately to the bankruptcy trustee or to the Official Receiver (if not the bankruptcy trustee);

(c) has, during the two years immediately preceding the date on which the bankrupt was adjudged bankrupt and while the bankrupt was insolvent, given any undue preference to any of the bankrupt's creditors with intent to defraud any other of the bankrupt's creditors; or

(d) before the bankrupt obtains a final order or discharge from bankruptcy (either alone or jointly with one or more other persons)—

(i) obtains credit of one hundred thousand shillings or more; or

(ii) incurs a liability to any person of one hundred thousand shillings or more for the purpose of obtaining credit for another person.

(2) In proceedings for an offence under subsection (1)(d)(i), it is a defence to prove that, before obtaining the relevant credit, the bankrupt informed the credit provider that the bankrupt was an undischarged bankrupt.

(3) In proceedings for an offence under subsection (1)(d)(ii), it is a defence to prove that, before incurring the relevant liability, the credit provider was informed that the person incurring the liability was an undischarged bankrupt.

(4) A person who is found guilty of an offence under subsection (1) is liable on conviction a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

PART IV — ALTERNATIVES TO BANKRUPTCY: NATURAL PERSONS

Division 1 – Voluntary arrangements
Subdivision 1 — Ordinary procedure

303. Interpretation: Division 1

(1) In this Division—

"debtor" means a debtor who is a natural person;

"interim order" means an order made under section 306;

"proposal" means a proposal made by a debtor to the debtor's creditors for a composition in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs;

"provisional supervisor", in relation to a proposal, means the person designated as referred to in section 306(1)(d);

"supervisor", in relation to a voluntary arrangement, means the person who is for the time being performing the functions imposed as a result of the approval of the arrangement by the creditors of the debtor under the arrangement;

"voluntary arrangement", in relation to a debtor, means a proposal that has taken effect in accordance with section 312(1).

(2) For the purposes of this Division, a voluntary arrangement approved by a creditors' meeting convened under section 309 ends prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement because of section 312(2)(b).

304. When application for interim order can be made

(1) An application to the Court for an interim order may be made if the debtor intends to make a proposal to the debtor's creditors under this Division for a composition in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs.

(2) The debtor shall ensure that the proposal provides for a person to act as supervisor of the voluntary arrangement to which the proposal relates.

(3) Only an authorised insolvency practitioner is eligible to act as supervisor of a voluntary arrangement.

(4) Subject to subsection (2), such an the application may be made—

(a) if the debtor is an undischarged bankrupt-by the debtor, the bankruptcy trustee of the debtor's estate or the Official Receiver; and

(b) in any other case-by the debtor.

(5) An application may be made by a debtor who is an undischarged bankrupt only if the debtor has given notice of the proposal to the Official Receiver and, if there is one, the bankruptcy trustee of the debtor's estate.

(6) An application may not be made while a bankruptcy application made by the debtor is pending, if the Court has, under section 33, appointed an authorised insolvency practitioner to inquire into the debtor's financial affairs and to report on those affairs to the Court.

305. Effect of application for interim order

(1) While an application under section 304 for an interim order is pending, the following provisions apply:

(a) a landlord or other person to whom rent is payable by the debtor may exercise a right of forfeiture in relation to premises let to the debtor for a failure of the debtor to comply with a term of the tenancy—

(i) only with the approval of the Court; and

(ii) if in giving approval the Court has imposed conditions-only if those conditions are complied with;

(b) the Court—

(i) may prohibit distress from being levied on the debtor's property or its subsequent sale, or both; and

(ii) may stay any action, execution or other legal process against the property or person of the debtor.

(2) A court in which proceedings are pending against the debtor may, on proof that an application has been made under section 304 in respect of the debtor,

either stay the proceedings or allow them to continue on such terms as it considers appropriate.

306. Power of the Court to make interim order

(1) On the hearing of an application made under section 304, the Court may make an interim order if satisfied—

(a) that the debtor intends to make a proposal under this Division;

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to make an application for the debtor's own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order during the twelve months immediately preceding that day; and

(d) that the supervisor designated under the debtor's proposal is willing to act in relation to the proposal.

(2) The Court shall make an interim order if satisfied that it would facilitate the consideration and implementation of the debtor's proposal.

(3) If the debtor is an undischarged bankrupt, the interim order may contain provisions as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is to have effect.

(4) However, an interim order may, in relation to a debtor who is an undischarged bankrupt, include a provision relaxing or removing a requirement of Part III or of this Division, or of the insolvency regulations, only if the Court is satisfied that the inclusion of the provision would be unlikely to result in a significant diminution in, or in the value of, the debtor's estate in relation to the conduct of the bankruptcy.

(5) Except as otherwise provided by this Division, an interim order made on an application made under section 304 ceases to have effect at the end of fourteen days from the date on which the order was made.

(6) On the making of an interim order, the designated supervisor referred to in subsection (1) (d) becomes provisional supervisor.

(7) While an interim order has effect in respect of a debtor—

(a) a bankruptcy application relating to the debtor may not be made or proceeded with;

(b) a landlord or other person to whom rent is payable may exercise a 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 a term or condition of the debtor's tenancy of the premises only with the approval of the Court; and

(c) any other proceedings (including execution or other legal process) may be begun or continued, and distress may be levied, against the debtor or the debtor's property only with the approval of the Court.

307. Provisional supervisor to report on debtor's proposal

(1) As soon as practicable after the making of an interim order, the provisional supervisor shall, before the order ceases to have effect, submit a report to the Court stating —

(a) whether, in that supervisor's opinion, the proposal has a reasonable prospect of being approved and implemented;

(b) whether, in that supervisor's opinion, a meeting of the debtor's creditors should be convened to consider the proposal; and

(c) if in that supervisor's opinion is that such a meeting should be convened-the date on which, and the time and place at which, it is proposed to hold the meeting.

(2) For the purpose of enabling the provisional supervisor to prepare that supervisor's report, the debtor shall submit to that supervisor—

(a) a document setting out the terms of the proposal; and

(b) a statement of the debtor's financial affairs containing—

(i) such particulars of the debtor's creditors and of the debtor's debts and other liabilities and of the debtor's assets as may be prescribed by the insolvency regulations for the purposes of this section; and

(ii) such other information as may be so prescribed.

(3) If the provisional supervisor has failed to submit the report required by this section or has died, the Court may, on an application made by the debtor, make an order directing that supervisor to be replaced as such by another authorised insolvency practitioner in relation to the proposal.

(4) If it is impracticable or inappropriate for the provisional supervisor to continue to act as such, the Court may, on an application made by the debtor or that supervisor, make an order directing that supervisor to be replaced as such by another authorised insolvency practitioner in relation to the proposal.

(5) If the provisional supervisor has failed to submit the report as required by this section, the Court may, on an application made by application of the debtor, make an order directing the interim order to continue, or (if it has ceased to have effect) to be renewed, for such further period as the Court may specify in the order.

(6) On the hearing of an application made by the provisional supervisor, the Court may make an order extending the period for which the interim order has effect so as to enable that supervisor to have more time to prepare his or her report.

(7) If, on receiving the provisional supervisor's report, the Court is satisfied that a meeting of the debtor's creditors should be convened to consider the debtor's proposal, the Court shall make an order directing the period for which the interim order has effect to be extended (for such further period as it may specify in the order) so as to enable the debtor's proposal to be considered by the debtor's creditors in accordance with this Division.

(8) The Court may discharge the interim order if it is satisfied, on the application of the provisional supervisor —

(a) that the debtor has failed to comply with the debtor's obligations under subsection (2); or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be convened to consider the debtor's proposal.

308. Debtor's proposal and provisional supervisor's report

(1) This section applies if—

(a) a debtor intends to make a proposal under this Division;

(b) no interim order has been made in relation to the proposal and no application for such an order is pending; and

(c) where the debtor is an undischarged bankrupt-the debtor has given notice of the proposal to the Official Receiver and, if there is one, the bankruptcy trustee of the debtor's estate,

unless a bankruptcy application made by the debtor is pending and the Court has, under section 33, appointed an authorised insolvency practitioner to inquire into the debtor's financial affairs and report the findings to the Court.

(2) For the purpose of enabling the provisional supervisor to prepare a report to the Court, the debtor shall submit to that supervisor—

(a) a document setting out the terms of the voluntary arrangement that the debtor is proposing; and

(b) a statement of the debtor's financial affairs containing—

(i) such particulars of the debtor's creditors and of the debtor's debts and other liabilities and of the debtor's assets as may be prescribed by the insolvency regulations for the purposes of this section; and

(ii) such other information as may be so prescribed.

(3) If of the opinion that the debtor is an undischarged bankrupt, or is in a position to apply for the debtor's own bankruptcy, the provisional supervisor shall, within the prescribed period, submit a report to the Court stating whether in his or her opinion-

(a) the debtor's proposal has a reasonable prospect of being approved and implemented; and

(b) a meeting of the debtor's creditors should be convened to consider the debtor's proposal.

(4) The prescribed period for the purpose of subsection (3) is—

(a) fourteen days after the provisional supervisor has received the document and statement referred to in subsection (2);

(b) such extended period as the Court may allow.

(5) If of the opinion that a meeting of the debtor's creditors should be convened to consider the debtor's proposal, the provisional supervisor shall fix the date on which, and time and place at which, it is proposed to hold the meeting and notify those creditors accordingly.

(6) If the provisional supervisor has failed to submit the report required by this section or has died, the Court may, on an application made by the debtor, make an order directing that supervisor to be replaced as such by another authorised insolvency practitioner.

(7) If it is impracticable or inappropriate for the provisional supervisor to continue to act as such, the Court may, on an application made by the debtor or that supervisor, make an order directing that supervisor to be replaced as such by another authorised insolvency practitioner.

(8) The Court may, on an application made by the provisional supervisor, extend the period within which that supervisor's report is required to be submitted.

309. When provisional supervisor is to convene creditors' meeting to consider debtor's proposal

(1) If it has been reported to the Court under section 307 or 308 that a meeting of the debtor's creditors should be convened, the provisional supervisor shall, unless the Court otherwise directs, convene that meeting for the time, date and place proposed in that supervisor's report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person convening the meeting is aware.

(3) For the purpose of subsection (2), the creditors of a debtor who is an undischarged bankrupt include —

(a) each person who is a creditor of the bankrupt in respect of a bankruptcy debt; and

(b) each person who would be such a creditor if the bankruptcy had commenced on the date on which notice of the meeting was given.

310. Conduct of creditors' meeting: consideration of debtor's proposal

(1) The main purpose of a creditors' meeting convened under section 309 is to decide whether to approve the debtor's proposal (with or without modifications).

(2) At the beginning of the meeting, those creditors present shall elect one of their number to be chairperson of the meeting.

(3) The chairperson shall then divide the meeting into three groups for voting purposes, with the first group comprising secured creditors (if any), the second group comprising preferential creditors (if any) and the third group comprising unsecured creditors.

(4) A modification to the debtor's proposal may be approved only if the debtor consents to it.

(5) A modification to the debtor's proposal may be one that provides for the provisional supervisor to be replaced by another authorised insolvency practitioner to perform the functions of supervisor of that proposal if it is approved and takes effect as a voluntary arrangement.

(6) However, a modification to the debtor's proposal may not be one as a result of which it is no longer a proposal as defined by section 303.

(7) If the proposal or a modification to it affects the right of a secured creditor of the debtor to enforce the creditor's security, the proposal or modification may not be approved unless—

(a) the creditor consents to it; or

(b) if the creditor does not consent to it — the creditor—

(i) would be in a position no worse than if the debtor were adjudged bankrupt;

(ii) would receive no less from the assets to which the creditor's security relates, or from their proceeds of sale, than any other secured creditor having a security interest in those assets that has the same priority as the creditor's; and

(iii) would be paid in full from those assets, or their proceeds of sale, before any payment from them or their proceeds is made to any other creditor whose security interest in them is ranked below that of the creditor, or who has no security interest in them.

(8) Subject to this section, the meeting is to be conducted in accordance with the rules (if any) prescribed by the insolvency regulations.

(9) The meeting may at any time resolve that it be adjourned, or further adjourned.

(10) As soon as practicable after the conclusion of the meeting, the chairperson —

(a) shall report the result of the meeting to the Court; and

(b) immediately after doing so, shall give notice of the result of the meeting to all persons to whom the notice convening the meeting was sent.

(11) If the report is to the effect that the meeting has decided not to approve the debtor's proposal (either with or without modifications), the Court shall discharge any interim order that has effect in relation to the debtor.

311. Approval of debtor's proposal

(1) This section applies to the decisions taken at the meeting of creditors held in accordance with section 310 to consider a debtor's proposal (with or without modifications).

(2) The debtor's proposal (including any modifications) is approved if it is supported by a majority (in number and value) of the creditors of each group of creditors present (either in person or by proxy) at the meeting of creditors.

(3) For the purposes only of deciding whether the requisite majority by value has voted in favour of a resolution to approve the debtor's proposal, the following provisions apply:

(a) the chairperson of the meeting may—

(i) admit or reject proofs of debt; and

(ii) adjourn the meeting in order to admit or reject proofs of debt;

(b) a person whose debt is admitted is a creditor.

(4) At any time before the deadline for making an application under this subsection, the debtor or any of the debtor's creditors who attended or was entitled to attend the meeting may make an application to the Court for an order under subsection (7).

(5) The deadline for making an application under subsection (4) is—

(a) the expiry of thirty days after the date on which the meeting of creditors was held; or

(b) if the Court extends that period, the expiry of the extended period.

(6) The debtor and any creditor who attended or was entitled to attend the meeting of creditors is entitled to appear and be heard at the hearing of the application even if not the applicant. The right conferred by this subsection may be exercised by such a creditor irrespective of whether the creditor supports or has an interest in the implementation of the proposal.

(7) On the hearing of an application made under subsection (4), the Court may—

(a) make an order approving the proposal (with or without the modifications (if any) put to the meeting of creditors in accordance with section 310); or

(b) make such other order as it considers appropriate,

but only if it considers that it would be in the best interests of both the debtor and the debtor's creditors to so.

(8) The Court may make an order under subsection (7)(a) even if the debtor's proposal (or a modification to it) was not approved at the creditors' meeting by a majority of the preferential creditors' group or the unsecured creditors' group, but may do so only if the proposal(or modification)—

(a) has been approved by a majority of the secured creditors' group;

(b) does not discriminate among the members of the dissenting group or groups of creditors and ensures that they will be no worse off than they would have been if the debtor had been adjudged bankrupt; and

(c) respects the priorities of preferential creditors over unsecured creditors.

(9) Section 93(3) and (4) apply in relation to a resolution purporting to be passed in accordance with this section.

312. Effect of approval of debtor's proposal by meeting of creditors or by the Court

(1) A debtor's proposal (with or without modifications) takes effect as a voluntary arrangement by the debtor on the day after the date on which it is approved by the Court by order made under section 311(7)(a) or on such later date as may be specified in the order.

(2) On taking effect as a voluntary arrangement, the approved proposal binds every person (including a secured creditor and a preferential creditor) who—

(a) was entitled to vote at the meeting (whether present or represented at the meeting or not); or

(b) would have been so entitled if the person had received notice of the meeting, as if the person were a party to the arrangement.

(3) On the approved proposal taking effect as a voluntary arrangement, the provisional supervisor becomes the supervisor of the arrangement unless that supervisor has been replaced in accordance with section 310(5).

(4) If—

(a) when the voluntary arrangement ends, any amount payable under the arrangement to a person bound because of subsection (2)(b)(ii) has not been paid; and

(b) that arrangement did not come to an end prematurely,

the debtor at that time becomes liable to pay to that person the amount payable under that arrangement.

(5) An interim order having effect in relation to the debtor immediately before the expiry of thirty days from and including the date on which the report with respect to the creditors' meeting was made to the Court in accordance with section 310(10) ceases to have effect at the end of that period.

(6) Subsection (5) applies except to such extent as the Court may direct for the purposes of any application made under section 314 (right to challenge decision taken at creditors' meeting).

(7) If proceedings on a bankruptcy application have been stayed by an interim order that has ceased to have effect, the application is, unless the Court otherwise orders, taken to have been dismissed.

313. Additional effect on undischarged bankrupt

(1) If the Court has approved a debtor's proposal in accordance with section 311(7)(a) and the debtor is an undischarged bankrupt—

(a) the bankrupt; or

(b) if the bankrupt has not made an application within the period prescribed by the insolvency regulations for the purposes of this section — the Official Receiver,

may make an application to the Court for an order under subsection (3).

(2) However, such an application may not be made—

(a) during the period within which the decision of the creditors' meeting can be challenged by an application made under section 314(1);

(b) while an application under section 314(1) is pending;

(c) while an appeal in respect of an order made under section 313 is pending; or

(d) during the period within which such an appeal may be made.

(3) On the hearing of an application made under subsection (1), the Court shall, subject to subsection (2), annul the bankruptcy order, unless it is of the opinion that there are compelling reasons not to do so.

(4) In making an order under subsection (3), the Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it considers appropriate for facilitating the implementation of the approved proposal.

314. Right to challenge decision taken at creditors' meeting

(1) Subject to subsection (3), any of the persons specified in subsection (2) may make an application to the Court on either or both of the following grounds:

(a) that a debtor's proposal approved by a creditors' meeting held in accordance with section 309 unfairly affects the interests of a creditor of the debtor;

(b) that a material irregularity occurred at or in relation to the meeting.

(2) The persons who may make an application for the purposes of subsection (1) are—

(a) the debtor;

(b) a person who—

(i) was entitled to vote at the creditors' meeting, or

(ii) would have been so entitled if the person had had notice of it;

(c) the provisional supervisor or, if the proposal has taken effect as a voluntary arrangement, the supervisor of the arrangement; and

(d) if the debtor is an undischarged bankrupt — the bankruptcy trustee in respect of the debtor's estate or the Official Receiver.

(3) An application under this section may not be made—

(a) after the end of thirty days from and including the date on which the result of the creditors' meeting was reported to the Court in accordance with section 309(10); or

(b) in the case of a person who was not given notice of the creditors' meeting — after the end of thirty days from and including the date

on which the person first became aware that the meeting had taken place,

but, subject to that, an application made by a person referred to in subsection (2)(b)(ii) on the ground that the voluntary arrangement unfairly affects the person's interests may be made even after that arrangement has ended, unless it has ended prematurely.

(4) If, on the hearing of an application made under subsection (1), the Court is satisfied as to either of the grounds referred to in that subsection, it may do one or both of the following:

(a) make an order revoking or suspending an approval given by the meeting;

(b) give a direction to any person for the convening of a further meeting of the debtor's creditors to consider any revised proposal the person may make or, in a case to which subsection (1)(b) applies-to reconsider the debtor's original proposal.

(5) If, at any time after giving a direction under subsection (4)(b) for convening 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) If the Court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case requires, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any applicable interim order.

(7) If, on the hearing of an application made under subsection (1) with respect to a creditors' meeting, the Court gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), it may give such ancillary directions as it considers appropriate and, in particular, directions with respect to—

(a) action taken since the meeting under any voluntary arrangement approved by the meeting; and

(b) such action taken since the meeting as could not have been taken if an interim order had effect in relation to the debtor when it was taken.

(8) Except as otherwise provided by this section, an approval given at a creditors' meeting held in accordance with section 309 is not invalidated by any irregularity occurring at or in relation to the meeting.

315. Implementation and supervision of voluntary arrangement

(1) The supervisor is responsible for implementing and supervising a voluntary arrangement that has taken effect under section 312 or 319 and has such powers as are necessary to enable that responsibility to be carried out.

(2) If a voluntary arrangement has effect under section 312 or 319, a debtor or a creditor of the debtor or any other person who is dissatisfied by any act, omission or decision of the supervisor may apply to the Court for an order under subsection (3).

(3) On the hearing of an application made under subsection (2), the Court—

(a) shall—

(i) if it finds the action or decision of the supervisor to have been unfair or unjustified-make an order quashing or modifying the act or decision; or

(ii) it does not so find-make an order confirming the act or decision; and

(b) if it makes an order under paragraph (a)(i), may—

(i) give such directions to the supervisor as it considers appropriate; and

(ii) make such ancillary order as it considers appropriate.

(4) On the application of the supervisor to the Court for directions in relation to any particular matter arising under the voluntary arrangement, the Court may give such directions in relation to the matter as it considers appropriate.

(5) Whenever—

(a) it is desirable to appoint a person to perform the functions of the supervisor; and

(b) it is difficult or impracticable for an appointment to be made without the assistance of the Court,

the Court may make an order appointing an authorised insolvency practitioner to act as supervisor in relation to the voluntary arrangement, either 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 performing the functions of supervisor or, if there is more than one person performing those functions, so as to replace one or more of those persons.

Subdivision 2 – Expedited procedure

316. Expedited voluntary arrangement procedure: availability

(1) This section applies if a debtor intends to make a proposal to the debtor's creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt;

(b) the Official Receiver is specified in the proposal as the provisional supervisor in relation to the proposal; and

(c) no application for an interim order has been made under section 304.

(2) If this section applies, the debtor may submit to the Official Receiver—

(a) a document setting out the terms of the debtor's proposal; and

(b) a statement of the debtor's financial affairs containing—

(i) such particulars as may be prescribed by the insolvency regulations for the purposes of this section of the debtor's creditors, debts, other liabilities and assets; and

(ii) such other information as may beso prescribed.

(3 If satisfied that the proposal has a reasonable prospect of being approved and implemented, the Official Receiver may make arrangements for the purpose of inviting creditors to decide whether to approve it.

(4) For the purposes of subsection (3), a person is a creditor only if—

(a) the person is a creditor of the debtor in respect of a bankruptcy debt; and

(b) the Official Receiver is aware of the person's claim and the person's address.

(5) In making arrangements under subsection (3), the Official Receiver shall ensure that —

(a) each creditor is provided with a copy of the debtor's proposal;

(b) each creditor is provided with information about the criteria by reference to which the Official Receiver will determine whether the creditors approve or reject that proposal; and

(c) no opportunity is allowed for modifications to that proposal to be suggested or made.

(6) If a debtor submits documents to the Official Receiver in accordance with subsection (2), an application under section 304 for an interim order may not be made in respect of the debtor unless the Official Receiver—

(a) has made the arrangements referred to in subsection (3); or

(b) has informed the debtor that the Official Receiver does not intend to make such arrangements (either because the Official Receiver is not satisfied that the proposal has a reasonable prospect of being approved and implemented or for any other reason).

(7) If a meeting of creditors is convened for the purpose of subsection (3), the provisions of section 310 apply to the holding and conduct of the meeting.

317. Duty of Official Receiver to report result to the Court

As soon reasonably practicable after the arrangements under section 316 have been implemented, the Official Receiver shall report to the Court whether the proposed voluntary arrangement has been approved or rejected.

318. Approval of expedited voluntary arrangement

(1) If the Official Receiver reports to the Court that the debtor's proposal has been approved, the proposal takes effect as a voluntary arrangement.

(2) On taking effect as a voluntary arrangement, the proposal binds—

(a) the debtor; and

(b) binds every person (including a secured creditor and a preferential creditor) who was entitled to participate in the arrangements made in accordance with section 316(3),

as if each of them were a party to the arrangement.

(2) In addition to submitting the report, the Official Receiver may make an application to the Court to make an order under subsection (4).

(3) However, such an application may not be made—

(a) during the period within which the voluntary arrangement can be challenged by an application under section 314;

(b) while an application made under that section is pending;

(c) while an appeal in respect of an application made under that section is pending; or

(d) during the period within which such an appeal may be made.

(4) On considering an application made under subsection (2), the Court shall annul the bankruptcy order in respect of the debtor unless it is of the opinion that there are compelling reasons not to do so.

(5) The Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it considers will facilitate the implementation of the approved voluntary arrangement.

319. Power of Official Receiver to make application for annulment of bankruptcy order where debtor is an undischarged bankrupt

(1) In addition to making the arrangements under section 316(3), the Official Receiver may, if the debtor is an undischarged bankrupt, make an application to the Court to make an order under subsection (3).

(2) Such an application may not be made—

(a) while an application for an order under section 311(7) is pending;

(b) during the period within which a voluntary arrangement can be challenged by an application made under section 314;

(c) while an application made under that section is pending;

(d) while an appeal in respect of an order made under that section is pending; or

(e) during the period within which such an appeal may be made.

(3) On considering an application made under subsection (1), the Court shall annul the bankruptcy order in respect of the debtor unless it is of the opinion that there are compelling reasons not to do so.

(4) The Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it considers will facilitate the implementation of the voluntary arrangement.

320. Revocation of expedited voluntary arrangement

(1) The Court may make an order revoking a voluntary arrangement that has effect because of section 318(1) on the ground—

(a) that it unfairly affects the interests of a creditor of the debtor; or

(b) that a material irregularity occurred in relation to the arrangements made under section 316(3).

(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 316(3);

(c) the bankruptcy trustee (if any); or

(d) the Official Receiver.

(3) An application under subsection (2) may not be made after the expiry of thirty days from and including the date on which the Official Receiver has reported to the Court as required by section 317.

(4) However, a creditor who was not made aware of the arrangements under section 316(3) at the time when they were made may make an application under subsection (2) during the thirty days from and including the date on which the creditor first became aware of the voluntary arrangement.

Subdivision 3 — Criminal conduct under the Division

321. Offence for debtor to make false representation for purpose of obtaining creditors' approval

(1) A debtor commits an offence, if for the purpose of obtaining approval to a proposal for a voluntary arrangement, the debtor—

(a) makes a representation knowing it to be false or misleading; or

(b) fraudulently does, or omits to do, any act.

(2) In subsection (1), the reference to obtaining approval to a proposal for a voluntary arrangement is to obtaining—

(a) the approval of a proposal for a voluntary arrangement presented to a meeting of the debtor's creditors held in accordance with section 310; or

(b) the approval of a proposal for a voluntary arrangement submitted to the Official Receiver in accordance with section 316.

(3) Subsection (1) applies even if the proposal is not approved.

(4) A person found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

322. Prosecution of delinquent debtors

(1) This section applies to a voluntary arrangement that has taken effect in accordance with section 312(1) or 319(1).

(2) As soon as practicable after forming a reasonable suspicion that a debtor has committed an offence in connection with a voluntary arrangement to which this section applies, the supervisor of the arrangement shall report the matter to the Attorney General and to the Director of Public Prosecutions.

(3) On receiving the supervisor’s report, the Attorney General or Director of Public Prosecutions may request the supervisor to provide—

(a) such information as is specified in the request; and

(b) access to, and facilities for inspecting and taking copies of, such documents as are so specified.

(3) The supervisor shall comply with such a request to the extent that the information or documents are under the debtor’s control and relate to the matter concerned.

(4) If the Director of Public Prosecutions takes criminal proceedings following a report made under subsection (2), the supervisor shall provide that Director with all assistance in connection with the prosecution that the supervisor is reasonably able to provide.

(5) If the supervisor fails to comply with subsection (3) or (4), the Attorney General or Director of Public Prosecutions may apply to the Court for an order under subsection (6).

(6) On the hearing of an application made under subsection (5), the Court may make an order directing the supervisor to comply with subsection (3) or (4), as appropriate.

Division 2 — Summary instalment orders

323. What is a summary instalment order?

A summary instalment order is an order made by the Official Receiver directing the debtor to pay the debtor's debts —

(a) in instalments or in some other way; and

(b) in full or to the extent that the Official Receiver considers practicable in the particular circumstances of the case.

324. Who can apply for summary instalment order

The Official Receiver may make a summary instalment order on the application of—

(a) a debtor; or

(b) a creditor with the debtor's consent.

325. Requirements for applications made by debtors

(1) The Official Receiver may refuse an application for a summary instalment order if the application does not comply with subsection (2).

(2) An application does not comply with this subsection unless it—

(a) is in the form prescribed by the insolvency regulations for the purposes of this section;

(b) states—

(i) that the debtor proposes to pay the creditors in full; or

(ii) the proportion of the outstanding debt that the debtor proposes to pay;

(c) states the total amount of the weekly or other instalments that the debtor proposes to pay;

(d) states—

(i) the name and address of the debtor's proposed supervisor and annex the written consent of that person to be supervisor; or

(ii) if the debtor claims that a supervisor is not necessary—the debtor's reasons for making that claim; and

(e) includes the following information:

(i) the debtor's full name and address;

(ii) details of the debtor's property;

(iii) the names and addresses of each creditor;

(iv) the amount and nature of each of the creditors' debts;

(v) whether any of the debts are secured and the value of the charge or security right;

(vi) whether any of the debts are guaranteed by any person;

(vii) the amount of the debtor's earnings;

(viii) the name and address of the debtor's employer (if any);

(ix) any other matter that may be prescribed by the insolvency regulations for the purposes of this subsection.

[Act No. 13 of 2017, Sch.]

326. Official Receiver may make summary instalment order

(1) The Official Receiver may make a summary instalment order if satisfied that—

(a) the debtor's total unsecured debts that would be provable in the debtor's bankruptcy do not exceed the amount prescribed by the insolvency regulations for the purpose of this section; and

(b) the debtor is unable immediately to pay those debts.

(2) The Official Receiver may not make such an order without having given the debtor and the creditors an opportunity to make representations with respect to the matter.

(3) A summary instalment order is not invalid merely because the total amount of the debts proved exceeds the amount specified in subsection (1) (a), but if it does, the supervisor appointed under section 328 shall refer the matter to the Official Receiver, in which case the Official Receiver shall cancel the order.

327. Power of Official Receiver to make additional orders

In addition to an order for the payment of the debts in instalments, the Official Receiver may make all or any of the following orders:

(a) an order regarding the debtor's future earnings or income;

(b) an order regarding the disposal of goods that the debtor owns or possesses;

(c) an order giving the supervisor appointed under section 328 power—

(i) to direct the debtor's employer to pay all or part of the debtor's earnings to the supervisor; and

(ii) to supervise payment, out of the debtor's earnings or income, of the reasonable living expenses of the debtor and the debtor's relatives and dependants.

328. Appointment of supervisors

(1) Except as provided by subsection (2), a summary instalment order is ineffective if it does not provide for the appointment of a suitable and willing person to supervise compliance by the debtor with the terms of the order.

(2) The Official Receiver may dispense with the appointment of a supervisor if the Official Receiver considers it appropriate to do so.

(3) In such a case—

(a) the provisions of this Division apply as if the debtor was the supervisor, except for section 329; and

(b) that section applies as if the Official Receiver was the supervisor.

(4) The Official Receiver may require a supervisor to provide a bond to secure the supervisor’s performance of the supervisor’s obligations under the Act.

(5) In imposing such a requirement, the Official Receiver shall specify the amount of the bond and the person to whom it is to be given.

329. Role of supervisors

(1) The supervisor is responsible for supervising the debtor’s compliance with the terms of the summary instalment order and any other orders made under section 327.

(2) The supervisor may charge the debtor remuneration for carrying out the supervisor’s responsibilities as supervisor at the amount or rates not exceeding the amount or rates fixed in accordance with the insolvency regulations.

330. Power of Official Receiver to require supervisor or past supervisor to provide documents

(1) The Official Receiver may, by notice, require a supervisor or a past supervisor to provide the Official Receiver, within not less than seven days from the

date of the notice, with any specified documents, or any documents of a specified class, that relate to the debtor's property, conduct or dealings that are under the control of the supervisor or past supervisor.

(2) A supervisor or past supervisor who fails to comply with a notice given to the supervisor or past supervisor under subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred and fifty thousand shillings.

331. Termination of supervisor's appointment for failure to supervise adequately

If of the opinion that the supervisor has failed to supervise the debtor's compliance adequately, the Official Receiver shall terminate the supervisor's appointment and appoint a replacement supervisor.

332. Period for payment of instalments

The payment of instalments under a summary instalment order can be spread over a period not exceeding—

(a) three years; or

(b) if justified by special circumstances acceptable to the supervisor—five years.

333. Variation or discharge of summary instalment orders

(1) The debtor, any creditor or the supervisor may at any time apply in writing to the Official Receiver to vary or discharge a summary instalment order.

(2) After considering an application made under subsection (1), the Official Receiver shall vary or discharge the order as the Official Receiver considers appropriate.

334. Effect of summary instalment orders

(1) The debtor shall pay all instalments payable under a summary instalment in the manner prescribed by the insolvency regulations.

(2) The Official Receiver shall cancel a summary instalments order on being satisfied on reasonable grounds that the debtor has failed to comply with subsection (1).

335. Restrictions on bringing proceedings against debtors while summary instalment order has effect

(1) In this section, "proceedings", in relation to a debtor in respect of whom a summary instalment order has been made, means proceedings brought against the person or property of the debtor in respect of a debt that has been—

(a) shown in the debtor's application for the summary instalment order;

(b) included in the summary instalment order; or

(c) notified to the supervisor.

(2) While a summary instalment order has effect, a person may not begin or continue proceedings against the debtor unless—

(a) the Official Receiver gives approval for a creditor to begin or continue the proceedings; or

(b) the debtor is in default under the order.

(3) In giving any such approval, the Official Receiver may impose such conditions as appear to the Official Receiver to be fair and reasonable.

(4) In the case of proceedings that are pending before a court at the time when the summary instalment order is made, the Court, unless the conditions specified in subsection (2)(a) or (b) apply—

(a) shall stay the proceedings on receiving notice of the order; and

(b) may award all or part of the creditor's costs incurred up to the time of the Court's notification, and may certify accordingly for the purpose of the creditor proving the debt under this Division.

336. Supervisor to give notice of summary instalment order to creditors

(1) The supervisor shall send a notice of the summary instalment order to every creditor—

(a) who is known to the supervisor;

(b) whose name is shown on the debtor's application for the order; or

(c) who has proved a debt under section 340.

(2) A supervisor who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

337. Public register of debtors subject to current summary instalment order

(1) The Official Receiver shall establish and maintain a public register of persons who are subject to current summary instalment orders.

(2) The Official Receiver shall maintain the register in accordance with Division 2 of Part XII.

338. When summary instalment order ceases to be current.

A summary instalment order is not current if it has been discharged or all the instalments required to be paid under the order have been paid in accordance with the order.

339. Claims of creditors when summary instalment has effect

(1) A creditor who has proved the creditor's debt to the satisfaction of the supervisor is entitled to be included as a creditor in the administration of the debtor's estate under the summary instalment order for the amount of the debt.

(2) A creditor may object to the supervisor's acceptance or rejection of any creditor's claim by applying to the Official Receiver.

(3) If a creditor objects under subsection (2), the Official Receiver may give any directions that the Official Receiver considers appropriate as to the acceptance or rejection of the claim.

(4) A person who becomes a creditor of the debtor after the order has been made, and who proves a debt before the supervisor, may elect to be included in the administration of the debtor's estate.

(5) If such a person so elects, the person may be paid a dividend under the order only after the creditors who became creditors of the debtor before the order was made and who have been included as a creditor in the administration have been paid under the order.

340. Payment of debtor's earnings to supervisor

(1) This section applies if the supervisor, under a power conferred by a summary instalment order made by the Official Receiver, directs the debtor's employer to pay the debtor's earnings, or part of them, to the supervisor.

(2) The amounts that the employer shall pay to the supervisor are recoverable as a debt from the employer, and the supervisor's receipt is a complete discharge to the employer for the debt.

(3) Payment by the employer in contravention of the supervisor's direction to pay the supervisor discharges the liability of the employer to the supervisor for the amount of the payment only if it is made—

(a) with the consent of the supervisor or the Official Receiver; or

(b) to a person who is not the debtor and who has a better legal claim to it than the debtor.

341. Consequences of default by debtor to pay amount due under summary instalment order

(1) A debtor who fails to pay an amount due under a summary instalment order is presumed, unless the contrary is proved—

(a) to have been able to pay the amount from the date of the order; and

(b) to have refused or neglected to pay it.

(2) If the debtor fails to make a payment in accordance with the order—

(a) proceedings that have been stayed under section 335 may begin or continue;

(b) any period during which a proceeding was stayed under that section are to be added to any period of limitation that applies to the proceeding.

(3) Subsection (2) is subject to any order of the Court to the contrary.

(4) As soon as practicable after a debtor fails to make a payment in accordance with a summary instalment order, the supervisor shall give notice of the failure to the Official Receiver.

342. Offence for debtor to obtain credit while summary instalment order has effect

(1) A debtor in respect of whom a summary instalment order is in effect commits an offence if, before all creditors have been paid the amounts to which they are entitled under the order, the debtor—

(a) alone or jointly with another person, obtains credit of one hundred thousand shillings or more;

(b) incurs a liability to another person for one hundred thousand shillings or more for the purpose of obtaining credit for another person; or

(c) enters into a credit purchase transaction under which the debtor is liable to pay one hundred thousand shillings or more.

(2) In proceedings for an offence under subsection (1), it is a defence to prove—

(a) in a case to which subsection (1)(a) applies—that, before obtaining the relevant credit, informed the credit provider that the debtor was subject to a summary instalment order;

(b) in a case to which subsection (1)(b) applies—that, before the defendant incurred the relevant liability, the credit provider was informed that the defendant was subject to a summary instalment order; or

(c) in a case to which subsection (1)(c) applies-that, before the defendant entered into the relevant agreement, the other parties to the

agreement were informed that the defendant was subject to a summary instalment order.

(3) A person who is found guilty of an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

Division 3 — No-asset procedure

343. Division 3: introduction

This Division prescribes a procedure for dealing with a debtor who has no realisable assets.

344. Application for entry to no-asset procedure

(1) A debtor who meets the criteria set out in section 345 may apply to the Official Receiver for entry to the no-asset procedure.

(2) A debtor can apply for entry to the no-asset procedure by completing the following documents and lodging them with the Official Receiver:

(a) an application in the form prescribed by the insolvency regulations for the purpose of this section; and

(b) a statement in the form so prescribed setting out the debtor's financial position.

(3) The Official Receiver may reject the debtor's application if the application or statement of the debtor's financial position is, in the Official Receiver's opinion, incorrect or incomplete.

345. Criteria for entry to no-asset procedure

(1) The Official Receiver shall admit a debtor to the no-asset procedure if satisfied on reasonable grounds that—

(a) the debtor has no realisable assets;

(b) the debtor has not previously been admitted to the no-asset procedure;

(c) the debtor has not previously been adjudged bankrupt;

(d) the debtor has total debts that are not less than one hundred thousand shillings and not more than four million shillings; and

(e) the debtor does not have the means to repay any amount towards those debts.

(2) In this section, "realisable assets" does not include the assets that a bankrupt is allowed to retain under section 161, but does include assets (such as gifted assets) that might be recoverable by the Official Receiver—

(a) if the debtor were to be adjudged bankrupt on the date of application for entry to the no-asset procedure; and

(b) if Division 19 of Part II applied.

346. Debtor disqualified from entry to no-asset procedure in certain cases

The Official Receiver shall not admit a debtor to the no-asset procedure if satisfied, on reasonable grounds, that—

(a) the debtor has concealed assets with the intention of defrauding the debtor's creditors (such as by transferring property to a trust);

(b) the debtor has engaged in conduct that would, if the debtor were adjudged bankrupt, constitute an offence under this Act;

(c) the debtor has incurred a debt or debts knowing that the debtor does not have the means to repay them; or

(d) a creditor intends to apply for the debtor to be adjudged bankrupt and it is likely that, if the debtor were to be adjudged bankrupt, the outcome for the creditor would be materially better than if the debtor were admitted to the no-asset procedure.

347. Official Receiver to notify creditors

As soon as practicable after receiving an application from a debtor for entry to the no-asset procedure, the Official Receiver shall send a summary of the debtor's assets and liabilities to each known creditor of the debtor.

348. Restrictions on debtor obtaining credit after application made

(1) A debtor who has applied for entry to the no-asset procedure shall not obtain credit (including credit under a credit purchase transaction), either alone or jointly with another person, of more than ten thousand shillings without first informing the credit provider that the debtor has applied for entry to the no-asset procedure.

(2) A debtor who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

349. When debtor admitted to no-asset procedure

(1) A debtor is admitted to the no-asset procedure when the Official Receiver sends the debtor a notice in the form prescribed by the insolvency regulations for the purposes of this section.

(2) As soon as practicable after a debtor is admitted to the no-asset procedure, the Official Receiver shall—

(a) notify that fact to each creditor of the debtor of whom the Official Receiver is aware; and

(b) publish notice of it in a publication and in a manner prescribed by the insolvency regulations.

350. Public register of persons admitted to no-asset procedure

(1) The Official Receiver shall establish and maintain a public register of persons admitted to the no- asset procedure and persons discharged from that procedure under section 359.

(2) The Official Receiver shall maintain the register in accordance with Division 2 of Part XI.

351. Creditors may not enforce debts of debtor admitted to no-asset procedure

(1) A creditor of a debtor may not, after the debtor has been admitted to the no-asset procedure, begin or continue any step to recover or enforce a debt—

(a) that the debtor owes to the creditor at the time when the debtor applies for entry to the no-asset procedure; and

(b) that would be provable in the debtor's bankruptcy if the debtor were to be adjudged bankrupt.

(2) Despite subsection (1), the following debts remain enforceable:

(a) amounts payable under a court order made under the Matrimonial Causes Act (Cap. 152);

(b) amounts payable under the Children Act (No. 8 of 2001);

(c) amounts owed in respect of a loan to secure the education of a dependent child or step-child of the debtor.

352. Debtor's duties after entry to noasset procedure

(1) On being required by the Official Receiver to do so, the debtor shall provide the Official Receiver with such assistance, documents and information as are reasonably necessary in order to apply the no-asset procedure to the debtor.

(2) As soon as practicable after any change occurs in the debtor's circumstances that would allow the debtor to repay an amount towards the debts referred to in section 351(1), the debtor shall give written notification of the change to the Official Receiver.

(3) The debtor may not obtain credit, either alone or jointly with another person, of more than one hundred thousand shillings without first informing the credit provider that the debtor is subject to the no-asset procedure.

(4) In subsection (4), "credit" includes credit under a conditional purchase transaction.

353. Offence for person admitted to no-asset procedure to obtain credit

(1) A person who, while admitted to the no asset procedure—

(a) alone or jointly with another person, obtains credit of one hundred thousand shillings or more;

(b) incurs liability to a credit provider for one hundred thousand shillings or more for the purpose of obtaining credit for another person; or

(c) enters into a credit purchase transaction under which the person is liable to pay one hundred thousand shillings or more,

commits an offence.

(2) In proceedings for an offence under subsection (1), it is a defence to prove—

(a) in a case to which subsection (1)(a) applies – that, before obtaining the relevant credit the defendant informed the credit provider that the defendant was admitted to the no-asset procedure;

(b) in a case to which subsection (1)(b) applies – that, before the defendant incurred the relevant liability, the credit provider was informed that the defendant was admitted to the no-asset procedure; or

(c) in a case to which subsection (1)(c) applies – that, before the defendant entered into the relevant agreement, the other parties to the agreement were informed that the defendant was admitted to the no-asset procedure.

(3) A person who is found guilty of an offence under this section is on conviction liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

354. How debtor's participation in the no-asset procedure is terminated

A debtor's participation in the no-asset procedure terminates when—

(a) the Official Receiver terminates the debtor's participation under section 355;

(b) the debtor is discharged under section 359;

(c) the debtor applies for the debtor's own bankruptcy; or

(d) a creditor who is entitled to do so (for example, because the creditor's debt is enforceable as a debt specified in section 351(2)) applies for the debtor's bankruptcy and the debtor is adjudged bankrupt.

355. When Official Receiver may terminate no-asset procedure

(1) The Official Receiver shall terminate a debtor's participation in the no-asset procedure if satisfied—

(a) that the debtor was wrongly admitted to the no-asset procedure (for example, because the debtor concealed assets) or misled the Official Receiver; or

(b) that the debtor's financial circumstances have changed sufficiently to enable the debtor to repay an amount towards the debtor's debts.

(2) The debtor's participation in the no-asset procedure is terminated by the Official Receiver sending a notice to that effect to the debtor at the debtor's last known address.

(3) The termination takes effect when the notice is sent, whether or not the debtor receives it.

(4) As soon as practicable after the termination of a debtor's participation in the no-asset procedure, the Official Receiver shall send a notice of the termination to each creditor of the debtor known to the Official Receiver.

356. Official Receiver may apply for preservation order on ground of debtor's misconduct

(1) If the Official Receiver terminates a debtor's participation in the no-asset procedure on the ground that the debtor has concealed assets or misled the Official Receiver, the Court may, on the application of the Official Receiver, make an order for the preservation of the debtor's assets pending an application for the debtor's bankruptcy.

(2) The Court may make an order under subsection (1) on such terms as it considers appropriate.

357. Effect of termination of debtor's participation in no-asset procedure

(1) On termination of the debtor's participation in the no-asset procedure—

(a) the debtor's debts that became unenforceable on the debtor's entry to the no-asset procedure become again enforceable; and

(b) the debtor becomes liable to pay any penalties and interest that may have accrued.

(2) Subsection (1) does not apply if the debtor's entry to the no-asset procedure is terminated by discharge under section 359.

358. Creditor may apply to Official Receiver for termination of debtor's participation in no-asset procedure

A creditor may apply to the Official Receiver for termination of the debtor's participation in the no-asset procedure on the ground—

(a) that the debtor did not meet the criteria for admission to the no-asset procedure; or

(b) that there are reasonable grounds for the Official Receiver to conclude that the debtor was disqualified under section 346.

359. Discharge of debtor's participation in no-asset procedure

(1) A debtor who is participating in the no-asset procedure is automatically discharged from that procedure at the end of twelve months after the date when the debtor was admitted to it.

(2) Subsection (1) does not apply if the Official Receiver—

(a) is satisfied that the twelve-month period should be extended for the purpose of properly considering whether the debtor's participation in the no-asset procedure should be terminated; and

(b) sends a written deferral notice to the debtor's last known address before the end of that period.

(3) The Official Receiver shall specify in the deferral notice an alternative date for automatic discharge, which may be not later than thirty-five days after the end of the twelve-month period.

(4) A deferral notice has effect whether or not the debtor receives it.

(5) As soon as practicable after sending a deferral notice to a debtor, the Official Receiver shall send a copy of the notice to each creditor of the debtor known to the Official Receiver.

(6) The debtor is automatically discharged from the no-asset procedure on the date specified in the deferral notice.

(7) The Official Receiver may revoke a deferral notice in the same way in which it was sent, in which case, the debtor is automatically discharged from the no-asset procedure—

(a) if the notice is revoked on or before the end of the twelve-month period specified in subsection (1)—at the end of that period; or

(b) if it is revoked after the end of that period—on the date of revocation.

360. Effect of discharge of debtor's participation in no-asset procedure

(1) On discharge under section 359—

(a) the debtor's debts that became unenforceable on the debtor's entry to the no-asset procedure are cancelled; and

(b) the debtor is no longer liable to pay any part of the debts, including any penalties and interest that may have accrued.

(2) Subsection (1) does not apply—

(a) to any debt or liability incurred by fraud or fraudulent breach of trust to which the debtor was a party; or

(b) any debt or liability for which the debtor has obtained forbearance through fraud to which the debtor was a party.

(3) The debts and liabilities referred to in subsection (2) again become enforceable on discharge under section 359, and the debtor is liable to pay any penalty or interest that may have accrued.

361. Discharge does not release debtor's business partners and others

A discharge under section 359 does not release a person who, at the date of discharge, was—

(a) a business partner of the discharged debtor;

(b) a co-trustee with the discharged debtor;

(c) jointly bound or had made any contract with the discharged debtor; or

(d) a guarantor or in the nature of a guarantor of the discharged debtor.

PART V — ADMINISTRATION OF INSOLVENT DECEASEDS' ESTATES

Division 1 — Introductory provision

362. Interpretation: Part V

(1) In this Part—

"administrator" has the same meaning as in the Law of Succession Act;

"beneficiary" in relation to a deceased debtor's estate, means a person who is beneficially interested in the estate;

"estate" has the same meaning as in the Law of Succession Act and, in relation to a deceased debtor, means that part of the debtor's estate that is available for distribution under section 376;

"executor" has the same meaning as in the Law of Succession Act;

"trustee" means a trustee appointed under section 370(2);

(2) This Part does not affect—

(a) any property of a deceased that does not form part of the deceased debtor's estate; or

(b) the administration of that property.

Division 2 — Functions of the Court in respect of administration of insolvent estates

363. Court may order that estate be administered under this Part

(1) The Court may order that the estate of a deceased debtor be administered under this Part on the application—

(a) under section 364 of the executor or administrator or a person who is applying to the Court for a grant of probate or letters of administration: or

(b) under section 365 of—

(i) a creditor who has produced evidence establishing a debt due to the creditor; or

(ii) a beneficiary.

(2) The Court may not make such an order if it is satisfied that—

(a) there is a reasonable probability that the estate will be sufficient to pay all of the deceased's debts; and

(b) the creditors will not be detrimentally affected by the estate being administered in the normal way.

364. Application by executor or administrator, etc

(1) The executor or administrator, or a person who is applying to the Court for a grant of probate or letters of administration, may apply to the Court for an order that

the estate be administered under this Part if the executor or administrator or person applying is of the view that the money in the estate (together with the proceeds of any assets in the estate that can conveniently be converted into money) will not be, or is not likely to be, sufficient to satisfy the several claims made or likely to be made on the estate.

(2) An application may—

(a) be joined with an application for a grant of probate or letters of administration in respect of the deceased's will or of the deceased's property that does not form part of the deceased's estate; or

(b) be made at any time after that grant.

(3) In addition to the application, an applicant shall lodge with the Court an account that—

(a) shows the assets, debts and liabilities of the deceased to the extent that the applicant knows what they are; and

(b) complies with subsection (4).

(4) An account complies with this subsection if it—

(a) is verified by statutory declaration; and

(b) is lodged—

(i) when the application is lodged;

(ii) within the prescribed time after the application is lodged; or

(iii) within such additional period (if any) as the Court may allow.

(5) The applicant may amend the account with the approval of the Court.

365. Application by creditor or beneficiary for order under this Part

(1) An application to the Court for an order under this Part may also be made—

(a) by a creditor of the deceased's estate, if the creditor's debt has reached the threshold for a creditor's application for bankruptcy; or

(b) by a beneficiary.

(2) A creditor or beneficiary may apply for such an order if—

(a) the executor or administrator has not applied under this Part, and after being requested in writing to apply, fails to apply within twenty-one days after receiving the request; or

(b) no executor or administrator has been appointed, and no application has been lodged in the Court under section 364, within four months after the date of the debtor's death.

(3) In the case of an application under subsection (2)(a) for an order that the estate be administered under this Part, the Court may not make the order before the expiry of two months after the date when probate or letters of administration were granted, but this restriction does not apply if—

(a) the executor or administrator has consented;

(b) the applicant proves that—

(i) the deceased was not insolvent at any time within three months before the death; or

(ii) the executor or administrator has favoured or is about to favour any particular creditor or creditors; or

(c) in the Court's opinion, the executor or administrator is not properly administering the estate.

(4) The Court may allow an application under subsection (2)(b) to be lodged before the expiry of four months after the date of the debtor's death if satisfied that —

(a) the deceased was insolvent at any time within the three months preceding the death; or

(b) the estate that should have been available for the deceased's creditors is rapidly diminishing.

366 Notice of application by creditor or beneficiary

If an application has been lodged by a creditor or beneficiary under section 365, the applicant shall give notice of the application—

(a) to the executor or administrator; or

(b) if there is no executor or administrator—to the person specified by the Court.

367. Court may order administration by Official Receiver or the Public Trustee instead of executor or administrator

(1) This section applies if—

(a) an application has been made to the Court for an order to administer an estate under this Part; and

(b) the Court believes that the estate is likely to be better administered by the Official Receiver or the Public Trustee rather than by the person who is or may become the executor or administrator.

(2) The Court may, as part of its original order on the application or by any subsequent order, make an order directing—

(a) the executor or administrator (if there is one) to stop administering the estate; and

(b) the Official Receiver or the Public Trustee to assume responsibility for its administration.

368. Certificate lodged by the Public Trustee has effect as application and order

(1) If the Public Trustee is the executor or administrator of, or would be entitled to obtain a grant of administration for, an apparently insolvent estate, the Public Trustee may lodge a certificate under this section.

(2) The lodging of a certificate in the prescribed form has the effect both of an application and an order that the estate be administered under this Part.

(3) The certificate is to be lodged in the Court registry from which the grant of probate or letters of administration was issued.

369. Estate vests in trustee

(1) The whole of the estate at the date when the application for the order under this Part was lodged vests in the person appointed by the Court to administer it as trustee.

(2) In its order that the estate be administered under this Part or in a subsequent order, the Court shall appoint as trustee—

(a) the executor or administrator;

(b) the Official Receiver;

(c) Public Trustee; or

(d) any other person who, in its opinion, is competent to act trustee.

370. Trustee to realise, administer and distribute estate

The trustee shall, as soon as practicable after the estate vests in the trustee, realise, administer, and distribute the assets in accordance with the law and practice of bankruptcy, subject to any modifications in this Part.

371. Entitlement of surviving spouse to household furniture and effects

(1) This section applies if the estate that vests in the trustee includes any of the deceased's necessary household furniture and effects that would have passed to the deceased's surviving spouse if the estate had not been insolvent.

(2) The surviving spouse may select and retain as the spouse's own property so much of the furniture and effects referred to in subsection (1) as the trustee determines.

(3) The surviving spouse shall make the selection within the time that the trustee allows.

(4) The surviving spouse's selection does not affect any rights under a valid charge or security right or a credit purchase transaction in respect of the goods selected.

(5) The fact that the goods available for selection are subject to a charge or credit purchase transaction does not give the surviving spouse any rights to any other part of the deceased's property.

[Act No. 13 of 2017, Sch.]

372. Trustee may make allowance to surviving spouse

(1) The trustee may make an allowance out of the estate to the surviving spouse or to any of the relatives or dependants of the deceased or the surviving spouse for the support of any of them.

(2) However, the trustee shall first obtain the consent of the creditors, which is to be expressed in the form of an ordinary resolution.

Division 3 —Trustee's responsibilities with respect to administration of insolvent deceased's estate

373. Application of Division 3

This Division applies if the Court has made an order that the estate of a deceased person be administered under this Part.

374. Trustee's functions and powers in respect of insolvent deceased's estate

The trustee has, in relation to the estate, the same functions and powers as a bankruptcy trustee has in relation to the property of a bankrupt.

375. Distribution of insolvent deceased's estate

(1) The trustee shall distribute the estate in the following order:

(a) firstly, payment of all proper costs, charges, debts and expenses of the due administration of the estate, whether incurred before or after the order is made;

(b) secondly, payment of the deceased's reasonable funeral expenses;

(c) thirdly, payment of the following expenses of the deceased incurred during the three months immediately before the deceased's death—

(i) medical expenses; and

(ii) reasonable expenses for hospital care provided for the deceased, so far as those expenses are lawfully recoverable;

(d) fourthly, payment of other claims and interest in accordance with the Second Schedule.

(2) For the purposes of subsection (1)(d), a reference in the Second Schedule to the commencement of the bankruptcy is to be read as a reference to the date of the deceased's death.

376. How any surplus is to be paid

(1) In this section, "surplus" means the surplus of assets that remains with the trustee after the trustee has paid in full—

(a) the debts due by the deceased debtor;

(b) the costs of the administration under this Part; and

(c) any other money that would be payable in a case of bankruptcy.

(2) The trustee shall—

(a) if there is an executor or administrator of the deceased's property that does not form part of the deceased's estate under this Part—pay the surplus to that executor or administrator; or

(b) if there is no such executor or administrator—distribute the surplus in accordance with the directions of the Court.

(3) In giving any such directions, the Court shall have regard to the persons who are entitled to the surplus.

(4) The Court may make an order approving the distribution of the surplus as part of the order that the estate be administered under this Part, or at any time afterwards.

(5) If the Court has made such an order, it may from time to time vary it in relation to any part of the surplus that remains under the control of the trustee at the date of the variation.

377. Creditor's notice to executor or administrator

If an order that a deceased's estate be administered under this Part is notified to the deceased's executor or administrator, the executor or administrator may obtain a proper discharge for any payment of money or disposition of property by the executor or administrator only if the payment or disposition is consistent with the terms of the order.

378. Power of trustee to act in relation to deceased's irregular transactions

(1) A trustee may take a step that a bankruptcy trustee could have taken under Division 19 of Part III (for example, by cancelling an irregular transaction) as if the deceased had been bankrupt at the time of death.

(2) When a trustee takes such a step, the following further additional restrictions apply:

(a) the trustee may not issue a notice cancelling a gift or voluntary settlement without first obtaining the approval of the Court;

(b) the Court may make an order under section 212 only if it is satisfied that recovery of the deceased's contribution to the property of another is necessary to pay the debts of the estate in full (including interest).

(3) The Court may give approval for the purpose of subsection (2)(a) only if it is satisfied that recovery of the gift or settlement is necessary to pay the debts of the estate in full (including interest).

379. Trustee may cancel execution against insolvent deceased debtor's estate

The trustee may cancel an execution against the deceased debtor's estate unless it was completed more than three months before the date of the order that the estate be administered under this Part.

380. Certain acts of executor or administrator valid if done in good faith

A payment made, or an act done or omitted to be done, in good faith by an executor or administrator in respect of a deceased's estate before the executor or administrator had notice of an intention to apply for an order that the estate be administered under this Part is not invalidated by any other provision of this Act.

PART VI—LIQUIDATION OF COMPANIES

Division 1— Introductory provisions

381. Scheme of Part VI

(1) This Part applies to the liquidation of a company registered under the Companies Act, 2015.

(2) A liquidation may be either—

(a) voluntary in accordance with Divisions 2 to 5; or

(b) by the Court in accordance with Division 6.

(3) This Division and Divisions 7 to 10 relate to liquidation generally, except when otherwise stated.

382. Distinction between "members" and "creditors" voluntary liquidation

In this Part—

(a) a liquidation in the case of which a directors' statutory declaration under section 398 has been made is a "members" voluntary liquidation"; and

(b) a liquidation in the case of which such a declaration has not been made is a "creditors" voluntary liquidation".

383. Interpretation: Part VI

(1) In this Part,

"contributories" means—

(a) means all persons liable to contribute to the assets of a company if it is liquidated; and

(b) for the purposes of all proceedings for determining, and all proceedings before the final determination of, the persons who are to be treated as contributories for the purposes of this Part— includes all persons alleged to be contributories;

"inability to pay its debts" in relation to a company, has the meaning given by section 384;

"liquidation committee meeting" in relation to a company, means a committee appointed by the creditors of the company in accordance with section 409;

"official rate" in relation to interest payable under this Part, is the rate fixed in accordance with subsection (3);

"resolution for voluntary liquidation" means a resolution passed under section 393(1)(a) or (b).

(2) The reference in subsection (1) to persons liable to contribute to the assets of a company does not include a person so liable because of a declaration by the Court under section 506 or 507.

(3) The Cabinet Secretary may, by order published in the *Gazette*, fix from time to time the official rate of interest for the purpose of any provision of this Part in respect of which the expression "official rate" is used.

384. The circumstances in which a company is unable to pay its debts

(1) For the purposes of this Part, a company is unable to pay its debts—

(a) if a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the debt and the company has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

(2) A company is also unable to pay its debts for the purposes of this Part if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(3) The insolvency regulations may increase or reduce the amount specified in subsection (1)(a).

385. Liability as contributories of present and former members

(1) When a company is being liquidated, every present and former member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the liquidation, and for the adjustment of the rights of the contributories among themselves.

(2) Subsection (1) is subject to the following provisions:

(a) a person who was formerly a member of the company is not liable to contribute if the person has ceased to be a member for twelve months or more before the commencement of the liquidation;

(b) a person who was formerly a member of the company is not liable to contribute in respect of any debt or liability of the company contracted after the person ceased to be a member;

(c) a former member is not 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;

(d) in the case of a company limited by shares—a contribution is not required from a member exceeding the amount (if any) unpaid on the shares for which the member is liable as a present or former member;

(e) nothing in the Companies Act, 2015 or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or because of which the funds of the company are alone made liable in respect of the policy or contract;

(f) an amount due to a member of the company as dividends, profits or otherwise is taken not to be a debt of the company, that is payable to the member in a case of competition between the member and any other creditor who is not a member of the company, but any such amount can be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, a member is not liable to contribute more than the amount that the member has undertaken to contribute under the company's guarantee.

386. Liability of past directors and shareholders

(1) In this section, "relevant payment" means a payment made out of capital in respect of the redemption or purchase by a company of any of its own shares.

(2) This section applies if a company is in liquidation and—

(a) it has, under the Companies Act, 2015, made a payment out of capital in respect of the redemption or purchase of any of its own shares; and

(b) the aggregate amount of the company's assets and the amounts paid as a contribution to its assets (apart from under this section) are not sufficient for payment of its debts and liabilities and the expenses of the liquidation.

(3) If the liquidation commenced within twelve months after the date on which the relevant payment was made—

(a) the person from whom the shares were redeemed or purchased; and

(b) the directors who prepared the statement that the company will be able to continue to carry on business as a going concern under the Companies Act, 2015 for purposes of the redemption or purchase, except a director who shows that the director had reasonable grounds for forming the opinion set out in the declaration,

are, to the extent necessary to satisfy the insufficiency, liable to contribute to the company's assets as provided by subsections (4) and (5).

(4) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of the person's shares; and the directors are jointly and severally liable with that person to contribute that amount.

(5) A person who has contributed an amount to the assets in accordance with this section may apply to the Court for an order directing any other person jointly

and severally liable in respect of that amount to pay to the person such amount as the Court considers appropriate and equitable.

(6) Section 385 does not apply to a liability accruing under this section.

387. Position of limited companies that were formerly unlimited

(1) This section applies to a company that is in liquidation if it was previously registered as unlimited but has since become re-registered as a limited company.

(2) Despite section 385(2)(a), a former member who was a member of the company at the time of its re-registration is, if the liquidation commences within the three years from and including the date on which the company was re-registered, liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or former member is liable to contribute as required by subsection (2) even though the existing members have paid the contributions required to be made by them.

(4) Subsection (3) applies subject to section 385(2)(a) and to subsection (2) of this section, but despite section 38(2)(c).

(4) Despite section 385(2)(d) and (3), there is no limit on the amount that a person who, at that time, was a past or present member of the company is liable to contribute.

388. Position of unlimited companies that were formerly limited

(1) This section applies to a company in liquidation that has previously been registered as limited but has since become re-registered as unlimited.

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a former member of the company and did not after that time again become a member of it is not liable to contribute to the assets of the company any more than would have been the case had the company not been re-registered.

389. Nature of contributory's liability

The liability of a contributory creates an ordinary contract debt due from the contributory at the time when the contributor's liability began, but payable at the times when calls are made to enforce the liability.

390. Death of contributories not to affect their liability

(1) If a contributory dies either before or after being placed on the list of contributories, the contributory's personal representatives are, in administering the contributory's estate, liable to contribute to the assets of the company in discharge of the contributory's liability and are therefore contributories.

(2) If the personal representatives fail to pay money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment from it of the money due.

391. Liability of contributories who are adjudged bankrupt

If a contributory is adjudged bankrupt, either before or after being placed on the list of contributories, the following provisions apply:

(a) the contributory's bankruptcy trustee represents the contributory for all purposes of the liquidation and is therefore a contributory for the purposes of this Part;

(b) that trustee may be required—

(i) to admit to proof against the contributory's estate; or

(ii) otherwise to permit the payment from the contributory's assets in due course of law,

any money due from the contributory in respect of the contributory's liability to contribute to the company's assets;

(c) there may be proved against the contributory's estate the estimated value of the contributory's liability to future calls as well as to calls already made.

392. Liability of contributories to contribute to debts of company registered but not formed under Companies Act, 2015

(1) This section applies to a company in liquidation that is registered but was not formed under the Companies Act, 2015.

(2) A person is, in respect of the company's debts and liabilities contracted before registration, a contributory if the person is liable—

(a) to pay, or contribute to the payment of, any debt or liability so contracted;

(b) to pay, or contribute to the payment of, any amount for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or

(c) to pay, or contribute to the amount of, the expenses of liquidating the company, so far as relates to those debts or liabilities.

(3) A contributory is liable to contribute to the assets of the company, in the course of the liquidation, all amounts due from the contributory in respect of any such liability.

(4) If a contributory dies or becomes bankrupt, the provisions of this Act relating to the personal representatives of deceased contributories and to the bankruptcy trustees of bankrupt contributories respectively apply.

Division 2 — Voluntary liquidation (introductory and general)

393. Circumstances in which company may be liquidated voluntarily

(1) A company may be liquidated voluntarily—

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution providing for its voluntary liquidation; or

(b) if the company resolves by special resolution that it be liquidated voluntarily.

(2) Before passing a resolution for voluntary liquidation, the company shall give notice of the resolution to the holder of any qualifying floating charge in respect of the company's property.

(3) If notice is given proposing a resolution for the voluntary liquidation of a company, such a resolution may be passed only—

(a) after the expiry of seven days from and including the date on which the notice was given; or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

(4) The provisions of the Companies Act, 2015 which deal with resolutions affecting a company's constitution apply to a resolution under paragraph (a) of subsection (1) as well as a special resolution under paragraph (b) of that subsection.

(5) For the purposes of this section, a person is the holder of a qualifying floating charge in respect of a company's property if the person holds one or more debentures of the company secured—

(a) by a qualifying floating charge that relates to the whole or substantially the whole of the company's property;

(b) by a number of qualifying floating charges that together relate to the whole or substantially the whole of the company's property; or

(c) by charges and other forms of security that together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

394. Notice of resolution to liquidate

(1) Within fourteen days after a company has passed a resolution for its voluntary liquidation, it shall publish a notice setting out the resolution—

(a) once in the *Gazette*;

(b) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(c) on the company's website (if any).

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence, the company continues to fail to take any of the steps specified in subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(4) For purposes of subsections (2) and (3), the liquidator is an officer of the company.

395. When liquidation commences

The voluntary liquidation of a company commences when the resolution for voluntary liquidation is passed.

396. Consequences of resolution to liquidate

(1) On and after the commencement of voluntary liquidation of a company, the company shall cease to carry on its business, except in so far as may be necessary for its beneficial liquidation.

(2) However, the corporate status and corporate powers of the company continue to have effect until the company is dissolved, even if the company's articles provide otherwise.

397. Share transfers and attempts to alter member's status after liquidation resolution to be void

The following are void if made after the commencement of a voluntary liquidation of a company:

(a) any transfer of the company's shares (other than a transfer made to or with the sanction of the liquidator);

(b) an alteration in, or an attempt to alter, the status of the company's members.

398. Making and effect of declaration of solvency by directors of company

(1) If it is proposed to liquidate a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect—

(a) that they have made a full inquiry into the company's affairs; and

(b) that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within such period (not exceeding twelve months from the commencement of the liquidation) as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for liquidation, or on that date but before the passing of the resolution; and

(b) it includes a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Within fourteen days after the date on which the resolution for liquidation is passed, the company shall lodge a copy of the declaration with the Registrar for registration.

(4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the specified period commits an offence and on conviction is liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(5) For the purpose of subsection (4), it is to be presumed, unless the contrary is established, that the director did not have reasonable grounds for his or her opinion if—

(a) the company is liquidated in accordance with a resolution passed within five weeks after the making of the declaration; and

(b) its debts (together with interest at the official rate) are not paid or provided for in full within the specified period.

(6) If a company fails to comply with subsection (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to lodge the required declaration, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 3 — Members' voluntary liquidation

399. Appointment of liquidator in members' voluntary liquidation

(1) In a members' voluntary liquidation, the company in general meeting shall appoint one or more liquidators for the purpose of liquidating the company's affairs and distributing its assets.

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

(3) Only an authorised insolvency practitioner is eligible for appointment under subsection (1).

400. Power to fill vacancy in office of liquidator

(1) If a vacancy occurs (whether by death, resignation or otherwise) in the office of liquidator appointed by the company, the company in general meeting shall, subject to any arrangement with its creditors, appoint another authorised insolvency practitioner to fill the vacancy.

(2) For the purposes of subsection (1), a general meeting may be convened—

(a) by a contributory; or

(b) if there was more than one liquidators—by the continuing liquidator or liquidators.

(3) The company shall hold the meeting—

(a) in the manner provided by this Act or by its articles; or

(b) in such manner as the Court determines on an application made by a contributory or by the continuing liquidator or liquidators.

401. General company meeting at each year's end

(1) If the liquidation of a company continues for a period of twelve months or more, the liquidator shall convene a general meeting of the company—

(a) within three months after the end of that period of twelve months; and

(b) within three months after the end of each subsequent period of twelve months.

(2) The liquidator shall lay before the meeting an account of the liquidator's acts and dealings, and of the conduct of the liquidation, during the preceding year.

(3) A liquidator who fails to comply with this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) The Cabinet Secretary may extend the period of three months referred to in subsection (1)(a) or (b) if satisfied that there are extenuating circumstances for doing so, and if the Cabinet Secretary grants such an extension, that subsection is to be interpreted accordingly.

(5) This section is subject to sections 404 and 410.

402. Final meeting prior to dissolution: members' voluntary liquidation

(1) As soon practicable after the liquidation of the company's affairs is complete, the liquidator—

(a) shall prepare an account of the liquidation showing how it has been conducted and how the company's property has been disposed of; and

(b) shall then convene a general meeting of the company for the purpose of laying before it the account and giving an explanation of it.

(2) The liquidator—

(a) shall convene the meeting by publishing, at least thirty days before the meeting, an advertisement—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any); and

(b) shall specify the time, date, place and purpose of the meeting.

(3) Within seven days after the meeting, the liquidator shall lodge with the Registrar a copy of the account, together with a return giving details of the holding of the meeting and of its date.

(4) If the copy and return are not lodged in accordance with subsection (3), the liquidator commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(5) If, after being convicted of an offence under subsection (4), a liquidator continues to fail to lodge the copy and the return, the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(6) If a quorum is not present at the meeting, the liquidator shall, instead of the return referred to in subsection (3), make a return that the meeting was duly convened and that no quorum was present; and on such a return being made, subsection (3) as to the lodging of the return is taken to have been satisfied.

(7) If the liquidator fails to convene a general meeting of the company as required by subsection (1), the liquidator commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

403. Effect of company's insolvency

(1) This section applies if the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 398.

(2) On forming the view that the company is or will be unable to pay its debts, the liquidator shall—

(a) convene a meeting of creditors for a date not later than thirty days after the day on which the contributory formed that opinion;

(b) send notices of the creditors' meeting to the creditors by post at least seven days before the day on which that meeting is to be held;

(c) publish notice of the creditors' meeting—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any); and

(d) advertise the meeting in such other manner and place as the liquidator considers desirable in the interests of the creditors;

(e) during the period before the day on which the creditors' meeting is to be held, provide creditors, free of charge, with such information concerning the affairs of the company as they may reasonably require; and

(f) specify in the notice of the creditors' meeting the duty imposed by paragraph (e).

(3) The liquidator shall also—

(a) prepare a statement setting out the financial position of the company that complies with subsection (4);

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(4) A statement complies with this subsection if it—

(a) specifies—

(i) the prescribed details of the company's assets, debts and liabilities;

(ii) the names and addresses of the company's creditors;

(iii) the securities (if any) respectively held by them and the dates on which they were respectively given; and

(iv) such other information (if any) as may be prescribed by the insolvency regulations; and

(b) is verified by a statutory declaration signed by the liquidator.

(5) If the company's principal place of business was located in different places at different times during the relevant period, the duty imposed by subsection (2)(c) applies separately in relation to each of those places.

(6) If the company had no place of business in Kenya during the relevant period, the references in subsections (2)(c) and (5) to the company's principal place of business are taken to be references to its registered office.

(7) In this section, "the relevant period" means the period of six months immediately preceding the day on which were sent the notices convening the company meeting at which it was resolved that the company be liquidated voluntarily.

(8) A liquidator who, without reasonable excuse, fails to comply with this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

404. Conversion to creditors' voluntary liquidation

As from and including the date on which the creditors' meeting is held in accordance with section 403—

(a) this Part has effect as if—

(i) the directors' declaration under section 398 had not been made; and

(ii) the creditors' meeting and the company meeting at which it was resolved that the company be liquidated voluntarily were the meetings referred to in section 406; and

(b) the liquidation becomes a creditors' voluntary liquidation.

Division 4 — Creditors' voluntary liquidation

405. Application of Division 4

(1) Except as provided by subsection (2), this Division applies in relation to a creditors' voluntary liquidation.

(2) Sections 406 and 407 do not apply if, under section 404, a members' voluntary liquidation has become a creditors' voluntary liquidation.

406. Meeting of creditors to be convened by company

(1) A company that is in the course of liquidation shall—

(a) convene a meeting of the company's creditors for a day not later than the fourteenth day after the day on which there is to be held the company meeting at which the resolution for voluntary liquidation is to be proposed;

(b) send the notices of the creditors' meeting to the creditors not less than seven days before the day on which that meeting is to be held; and

(c) ensure that notice of the creditors' meeting is published—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any).

(2) The company shall ensure that the notice of the creditors' meeting states either—

(a) the name and address of a person authorised to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will provide creditors free of charge with such information concerning the company's affairs as the creditors may reasonably require; or

(b) a place in the area in which the company has its principal place of business in Kenya where, on the two business days occurring immediately before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) If the company's principal place of business was located in different places at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) apply separately in relation to each of those places.

(4) If the company had no place of business in Kenya during the relevant period, the references in subsections (1)(c) and (3) to the company's principal place of business are taken to be references to its registered office.

(5) In this section, "the relevant period" means the period of six months immediately preceding the day on which were sent the notices convening the company meeting at which it was resolved that the company be liquidated voluntarily.

(6) If the company without reasonable excuse fails to comply with a requirement of subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

407. Directors to lay statement of financial position before creditors

(1) The directors of the company shall—

(a) prepare a statement setting out the financial position of the company that complies with subsection (3);

(b) lay that statement before the creditors' meeting under section 406; and

(c) appoint one of their number to preside at that meeting.

(2) It is the duty of the appointed director to attend the meeting and preside over it.

(3) A statement complies with this subsection if it—

(a) specifies—

(i) the details of the company's assets, debts and liabilities prescribed by the insolvency regulations for the purposes of this section;

(ii) the names and addresses of the company's creditors;

(iii) the securities held by them respectively;

(iv) the dates when the securities were respectively given; and

(v) such further or other information as may be so prescribed; and

(b) is verified by a statutory declaration signed by two or more of the company's directors.

(4) If the directors, without reasonable excuse, fail to comply with subsection (1)(a), (b) or (c), each of them commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(5) A director who, without reasonable excuse, fails to comply with a duty imposed by subsection (2) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

408. Creditors' voluntary liquidation: appointment of liquidator

(1) The creditors and the company at their respective meetings may nominate an authorised insolvency practitioner to be liquidator for the purpose of liquidating the company's affairs and distributing its assets.

(2) The liquidator is the insolvency practitioner nominated by the creditors unless they fail to make a nomination, in which case the liquidator is the insolvency practitioner (if any) nominated by the company.

(3) If different insolvency practitioners are nominated, any director, member or creditor of the company may, within seven days after the date on which the

nomination was made by the creditors, make an application to the Court for an order under subsection (4).

(4) On the hearing of an application made under subsection (3), the Court may make an order either—

(a) directing the insolvency practitioner nominated as liquidator by the company to be liquidator instead of, or jointly with, the insolvency practitioner nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the insolvency practitioner nominated by the creditors.

409. Creditors may appoint liquidation committee

(1) The creditors at the meeting to be held in accordance with section 406 or at any subsequent meeting may, if they think appropriate, appoint a liquidation committee of not more than five persons to perform the functions imposed or conferred on such committees by or under this Act.

(2) If such a committee has been appointed, the company may, either at the meeting at which the resolution for voluntary liquidation is passed or at any time subsequently in general meeting, appoint a number of persons, not exceeding five, to be members of the committee.

(3) However, the creditors may resolve that all or any of the persons so appointed by the company are disqualified from being members of the liquidation committee.

(4) If the creditors so resolve, the persons referred to in the resolution cease to be members of the committee, unless the Court, on the application of any of those persons, quashes the resolution.

(5) On the hearing of an application to the Court made by any of the creditors, the Court may appoint other persons to act as members of the committee in place of the persons mentioned in the resolution.

410. Creditors' meeting if liquidation converted under section 404

If, in the case of a liquidation that was under section 404 converted to a creditors' voluntary liquidation, a creditors' meeting is held in accordance with section 403 , any appointment made or committee established by that meeting is taken to have been made or established by a meeting held in accordance with section 406 (meetings of creditors).

411. Cessation of directors' powers

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee, or if there is no such committee, the creditors, sanction their continuance.

412. Vacancy in office of liquidator: creditors' voluntary liquidation

(1) If a vacancy occurs in the office of liquidator, the creditors may fill the vacancy.

(2) Subsection (1) does not apply to a liquidator appointed by, or by the direction of, the Court

413. Meetings of company and company's creditors to be held every twelve months

(1) A liquidator who continues in office for more than twelve months shall convene a general meeting of the company and a meeting of the creditors to be held—

(a) within three months after the end of that period of twelve months; and

(b) within three months after the end of each subsequent period of twelve months.

(2) The liquidator shall lay before each of the meetings an account of the liquidator's acts and dealings and of the conduct of the liquidation during the preceding year.

(3) A liquidator is not required to convene a meeting of creditors as provided by subsection (1)(a) if—

(a) under section 404, a members' voluntary liquidation has become a creditors' voluntary liquidation; and

(b) the creditors' meeting under section 403 is held three months or less before the end of the twelve months after the commencement of the liquidation.

(4) The Cabinet Secretary may extend the period of three months referred to in subsection (1)(a) or (b) if satisfied that there are extenuating circumstances for doing so, and such an extension is granted, that subsection is to be interpreted accordingly.

(5) A liquidator who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding one million shillings.

414. Final meeting prior to dissolution: creditors' voluntary liquidation

(1) As soon practicable after the liquidation of the company's affairs has been completed, the liquidator shall prepare an account of the liquidation and an explanation showing how it has been conducted and how the company's property has been disposed of

(2) Within thirty days after preparing the account, the liquidator shall, by a notice published in accordance with subsection (3), convene a general meeting of the company and a meeting of the creditors to enable those attending the meetings to consider the account and explanation.

(3) The liquidator shall ensure—

(a) that the notice is published—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any); and

(b) that the notice specifies the time, date, place and purpose of the meeting.

(4) Within seven days—

(a) after the date on which the meetings are held; or

(b) if they are not held on the same date—after the date on which the later one is held,

the liquidator shall lodge with the Registrar a copy of the account, together with a return giving details of the holding of the meetings and the dates on which they were held.

(5) A liquidator who fails to lodge the copy and return as required by subsection (3) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), a liquidator continues to fail to lodge the required copy and return, the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

(7) If a quorum is not present at either of the meeting, the liquidator shall, instead of the return required by subsection (3), make a return to the effect that the meeting was duly convened but no quorum was present

(8) On such return being made, the provisions of subsection (3) relating to the making of the return are, in respect of that meeting, taken to have been complied with.

(9) A liquidator who, without reasonable excuse, fails to convene a general meeting of the company or a meeting of the creditors as required by this section commits an offence and on conviction is liable to a fine not exceeding one million shillings.

Division 5 — Provisions applying to both kinds of voluntary liquidation

415. Property of company to be distributed among members after satisfaction of liabilities

(1) On the liquidation, the company's property in the voluntary liquidation—

(a) are to be applied in satisfaction of the company's liabilities equally and without preference; and

(b) subject to that application, are, unless the company's articles otherwise provide, to be distributed among the members according to their rights and interests in the company.

(2) Subsection (1) is subject to the provisions of this Act relating to preferential payments.

416. Appointment or removal of liquidator by the Court

(1) The Court may appoint a liquidator if for any reason there is no liquidator or the liquidator is unable to act,

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

(3) Only an authorised insolvency practitioner is eligible for appointment under this section.

(4) The acts of a person appointed by the Court as a liquidator of a company are valid despite any defect in the person's appointment or qualifications.

417. Notice of appointment to be published by liquidator

(1) Within seven days after being appointed as liquidator of a company, the liquidator shall publish a notice of the liquidator's appointment—

(a) once in the *Gazette*;

(b) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(c) on the company's website (if any).

(2) Within fourteen days after publishing (or first publishing) the notice of the liquidator's appointment, the liquidator shall lodge a copy of the notice with the Registrar for registration.

(3) A liquidator who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) If, after being convicted of an offence under subsection (3), a liquidator continues to fail to lodge the required notice, the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(5) A liquidator who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), a liquidator continues to fail to lodge the required notice, the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

418. Power of liquidator to accept shares or membership rights as consideration for sale of company's property

(1) In this section—

(a) the transferor company is a company to which this section applies; and

(b) a transferee company, or a transferee limited liability partnership, is the company or partnership to which the property of the transferor company is proposed to be, or is to be, transferred or sold.

(2) This section applies to a company that is proposed to be, or is being, liquidated voluntarily if the whole or part of the company's business or property is proposed to be transferred or sold —

(a) to a transferee company; or

(b) to a transferee limited liability partnership.

(3) With the required approval, the liquidator of the transferor company may receive, in compensation or part compensation for the transfer or sale—

(a) in the case of the transferee company—shares, policies or other similar interests in the transferee company for distribution among the members of the transferor company; or

(b) in the case of the transferee limited liability partnership—membership rights in the transferee limited liability partnership for distribution among the members of the transferor company.

(4) The approval required under subsection (3) is—

(a) in the case of a members' voluntary liquidation—a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement; and

(b) in the case of a creditors' voluntary liquidation—the approval of either the Court or the liquidation committee (if any).

(5) As an alternative to subsection (3), the liquidator may, with the required approval, enter into any other arrangement under which the members of the transferor company may—

(a) in the case of the transferee company—instead of receiving cash, shares, policies or similar interests (or in addition to them), participate in the profits of, or receive any other benefit from, the transferee company; or

(b) in the case of the transferee limited liability partnership—instead of receiving cash or membership rights (or in addition to them), participate in some other way in the profits of, or receive any other benefit from, that partnership.

(6) A sale or arrangement in accordance with this section is binding on members of the transferor company.

(7) A special resolution is not invalid for purposes of this section only because it is passed before or concurrently with a resolution for voluntary liquidation or for appointing a liquidator, but, if an order for the liquidation of the company is made by the Court within twelve months after the date on which the resolution was passed, the special resolution is valid only if approved by the Court.

(8) This section applies to a transferee company even if it is not a company registered under the Companies Act, 2015).

419. Dissenting member may require liquidator to refrain from giving effect to arrangement under section 418 or to purchase member's shares

(1) This section applies to a voluntary liquidation in relation to which the transferor company has passed a special resolution, for the purposes of section 418(3) or (5), providing the approval required for the liquidator under that section.

(2) If a member of the transferor company who did not vote in favour of the special resolution expresses the member's dissent from it in writing, addressed to the liquidator and left at the company's registered office within seven days after the passing of the resolution, the member may require the liquidator either—

(a) to refrain from giving effect to the resolution; or

(b) to purchase the member's interest at a price to be determined by agreement or by arbitration in accordance with the Arbitration Act, 1995.

(3) If the liquidator elects to purchase the member's interest, the liquidator shall —

(a) pay the purchase money before the company is dissolved; and

(b) raise the money in such manner as may be determined by special resolution.

(4) If the member requires the liquidator to purchase the member's interest and no agreement is reached as to the price to be paid for the interest, the requirement to purchase the interest is, for the purposes of the Arbitration Act, 1995, taken to be an arbitration agreement to determine that price.

420. Questions relating to liquidation may be referred to the Court for determination

(1) The liquidator, or a contributory or creditor, may apply to the Court to determine any question arising in the liquidation of a company, or to exercise, with

respect to the enforcing of calls or any other matter, all or any of the powers that the Court might exercise if the company were being liquidated by the Court.

(2) If satisfied that the determination of the question or the required exercise of power will be fair and beneficial, the Court may make an order acceding wholly or partially to the application on such terms as it considers appropriate, or may make such other order on the application as it considers appropriate.

(3) On the making of an order under subsection (2), the Registrar of the Court shall without delay forward a copy of the order to the Registrar of Companies for registration.

421. Restrictions on directors' powers to appoint or nominate liquidator of company in voluntary liquidation

(1) If, in the case of a company that is in voluntary liquidation, a liquidator has not been appointed or nominated by the company, the directors may exercise their powers only—

(a) with the approval of the Court; or

(b) in the case of a creditors' voluntary liquidation—so far as may be necessary to secure compliance with sections 406 and 407, during the period before the appointment or nomination of a liquidator of the company.

(2) Subsection (1) does not prevent the directors from exercising their powers—

(a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(b) to do all such other things as may be necessary for the protection of the company's assets.

(3) If the directors of the company, without reasonable excuse, fail to comply with subsection (1), each of them who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

422. Saving for certain rights

The voluntary liquidation of a company does not prevent a creditor or contributory from seeking to have the company liquidated by the Court, but in the case of an application by a contributory, the Court is required to be satisfied that the rights of the other contributories will not be detrimentally affected by such a liquidation.

Division 6 — Liquidation by the Court

423. Jurisdiction of High Court to supervise liquidation of companies

(1) Only the High Court has jurisdiction to supervise the liquidation of companies registered in Kenya.

(2) Subsection (1) does not apply to a company that is in voluntary liquidation in accordance with Divisions 2 to 5.

424. Circumstances in which company may be liquidated by the Court

(1) A company may be liquidated by the Court if—

(a) the company has by special resolution resolved that the company be liquidated by the Court;

(b) being a public company that was registered as such on its original incorporation—

(i) the company has not been issued with a trading certificate under the Companies Act, 2015; and

(ii) more than twelve months has elapsed since it was so registered;

(c) the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;

(d) except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;

(e) the company is unable to pay its debts;

(f) at the time at which a moratorium for the company ends under section 645—a voluntary arrangement made under Part IX does not have effect in relation to the company; or

(g) the Court is of the opinion that it is just and equitable that the company should be liquidated.

(2) A company may also be liquidated by the Court on an application made by the Attorney General under section 425(6).

425. Applications to the Court for liquidation of companies

(1) An application to the Court for the liquidation of a company may be made any or all of the following:

(a) the company or its directors;

(b) a creditor or creditors (including any contingent or prospective creditor or creditors);

(c) a contributory or contributories of the company;

(d) a provisional liquidator or an administrator of the company;

(e) if the company is in voluntary liquidation—the liquidator.

(2) However, except as otherwise provided by this section, a contributory is not entitled to make a liquidation application unless either—

(a) the number of members is reduced below two; or

(b) the relevant shares (or some of them) either—

(i) were originally allotted to the contributory, or have been held by the contributory, and registered in the contributory's' name, for at least six months during the eighteen months preceding the commencement of the liquidation; or

(ii) have devolved on the contributory through the death of a former holder.

(3) A person who is liable under section 386 to contribute to a company's assets on its in liquidation may make an application on either of the grounds specified in section 424(1)(e) and (g), in which case subsection (2) does not apply, but, unless the person is a contributory otherwise than under section 386, the contributory may not as such make a liquidation application on any other ground.

(4) A liquidation application on the ground specified in section 424(1)(f) may only be made by one or more creditors.

(5) The Attorney General may make a liquidation application if—

(a) the ground of the application is that specified in section 424(1)(b); or

(b) it is a case to which section 426 applies.

(6) The Attorney General may also make an application for the liquidation of a company if, after receiving from an inspector appointed to conduct an investigation into the affairs of a company under the Companies Act, 2015 a copy of a report of the investigation, the Attorney General considers that, as a result of the report, the company should be liquidated.

(7) Subject to subsection (8), the Official Receiver or by any other person authorised under the other provisions of this section may make a liquidation application to the Court in respect of a company that is in voluntary liquidation.

(8) The Court may make a liquidation order on such an application only if it is satisfied that the voluntary liquidation cannot be continued with due regard to the interests of the creditors or contributories.

426. Application for liquidation of company on grounds of public interest

(1) If, in relation to a company, it appears to the Attorney General—

(a) from a report made or information obtained from investigations carried out or inspection of documents produced under the Companies Act, 2015;

(b) from a report made, or information obtained, by the Capital Markets Authority under the Capital Markets Act;

(c) from information provided by the Registrar; or

(d) as a result of the company or its directors having been convicted of an offence involving fraudulent conduct,

that it would be in the public interest for the company to be liquidated, the Attorney General may make an application to the Court to make a liquidation order in respect of the company for its liquidation on the ground that it would be just and equitable for it to be so.

(2) Subsection (1) does not apply if the company is already in the process of liquidation by the Court.

427. Powers of Court on hearing of liquidation application

(1) On the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate:

(a) an order dismissing the application;

(b) an order adjourning the hearing, conditionally or unconditionally;

(c) an interim liquidation order; or

(d) any other order that, in its opinion, the circumstances of the case require.

(2) However, the Court may not refuse to make a liquidation order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(3) If the application is made by members of the company as contributories on the ground that it is just and equitable that the company should be liquidated, the Court shall make a liquidation order, but only if of the opinion that—

(a) that the applicants are entitled to relief either by liquidating the company or by some other means; and

(b) that, in the absence of any other remedy, it would be just and equitable that the company should be liquidated,

(4) Subsection (3) does not apply if the Court is also of the opinion that—

(a) some other remedy is available to the applicants; and

(b) they are acting unreasonably in seeking to have the company liquidated instead of pursuing that other remedy.

428. Power to stay or restrain proceedings against company when liquidation application has been made

(1) At any time after the making of a liquidation application, and before a liquidation order has been made, the company, or any creditor or contributory, may —

(a) if legal proceedings against the company are pending in the Court— apply to the Court for the proceedings to be stayed; and

(b) if proceedings relating to a matter are pending against the company in another court—apply to the Court to restrain further proceedings in respect of that matter in the other court.

(2) On the hearing of an application under subsection (1)(a) or (b) , the Court may make an order staying or restraining the proceedings on such terms as it considers appropriate.

(3) If, in relation to a company registered (but not formed) under the Companies Act, 2015, the application is made by a creditor, this section extends to any contributory of the company.

429. Dispositions of property by company after commencement of liquidation to be void unless the Court otherwise orders

(1) In a liquidation ordered by the Court—

(a) any disposition of the company's property; and

(b) any transfer of shares, or alteration in the status of the company's members,

made after the commencement of the liquidation is void, unless the Court otherwise orders.

(2) Subsection (1) does not apply to action taken by an administrator of a company while a liquidation application is suspended under section 558(1)(b) (effect of administration order on pending liquidation application).

430. Attachments and other forms of execution against company in liquidation to be void

If a company is being liquidated by the Court, any attachment, sequestration, distress or execution instigated against the assets of the company after the commencement of the liquidation is void.

431. When liquidation of company by the Court commences

(1) If, before the making of an application for the liquidation of a company by the Court, a resolution has been passed by the company for liquidating the company voluntarily—

(a) the liquidation commences at the time of the passing of the resolution; and

(b) unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary liquidation are to be regarded as having have been validly taken.

(2) If the Court makes a liquidation order under section 534, the liquidation commences on the making of the order.

(3) In any other case, the liquidation of a company by the Court commences when the application for liquidation order is made.

432. Consequences of liquidation order

(1) Within seven days after a liquidation order is made in respect of a company, the company shall lodge a copy of the order with the Registrar for registration and also lodge a copy of it with the Official Receiver.

(2) When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.

(3) An order for liquidating a company operates in favour of all the creditors and of all contributories of the company as if made on the joint application of all of them.

433. Official Receiver may require certain persons to submit statement relating to company's affairs

(1) If the Court has made a liquidation order or appointed a provisional liquidator in respect of a company, the Official Receiver may require some or all of the prescribed persons to make out and submit to the Official Receiver a statement of affairs relating to the company.

(2) Those prescribed persons who are required to make out such a statement shall do so without delay and shall include in it—

(a) such particulars of the company's assets, debts and liabilities as are prescribed by the insolvency regulations for the purposes of this section;

(b) the names and addresses of the company's creditors;

(c) the securities (if any) held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as the Official Receiver may reasonably require.

(3) The prescribed persons are—

(a) those who are or have been officers of the company;

(b) interest payable on the debt up to the time when it is paid;

(b) those who have taken part in the formation of the company at any time during the twelve months before the relevant date;

(c) those who—

(i) are in the company's employment, or have been in its employment during that period; and

(ii) are in the Official Receiver's opinion capable of giving the information required;

(d) those who are or have been within that period officers of, or in the employment of, a company that is, or within that period was, an officer of the company.

(4) Prescribed persons who under this section are required under this section to submit a statement of affairs to the Official Receiver shall, subject to subsection (5), do so within twenty-one days from and including the date on which notice of the requirement was given to those persons by the Official Receiver and verify the statement by statutory declaration.

(5) The Official Receiver may—

(a) at any time release a person from an obligation imposed on the person under subsection (1) or by subsection (2); or

(b) either when giving the notice referred to in subsection (4) or subsequently—extend the period referred to in that subsection.

(6) If the Official Receiver has declined to exercise a power conferred by subsection (5), the Court may, on the application of the Attorney General or a person who is dissatisfied with the Official Receiver's decision, exercise the power if it considers it appropriate to do so.

(7) In this section—

"employment" includes employment under a contract for the supply of services; and

"the relevant date" means—

(a) if a provisional liquidator is appointed—the date of the appointment; and

(b) if no such appointment is made—the date of the liquidation order.

(8) A person who, without reasonable excuse, fails to comply with an obligation imposed by or under this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(9) If, after being convicted of an offence under subsection (8), a person, without reasonable excuse, continues to fail to comply with the relevant obligation, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

434. Duty of Official Receiver to conduct investigation into failure of company

(1) On the making of a liquidation order, the Official Receiver shall conduct an investigation—

(a) if the company has failed—to discover why the company failed; and

(b) generally, to investigate the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as the Official Receiver considers appropriate.

(2) In any legal proceedings, the Official Receiver's report is evidence of the matters stated in it until the contrary is proved.

435. Public examination of officers and former officers of company

(1) If a company is being liquidated by the Court, the Official Receiver may, at any time before the dissolution of the company, apply to the Court for the public examination of any person who—

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

(b) has acted as provisional liquidator, liquidator or administrator of the company; or

(c) not being a person referred to in paragraph (a) or (b)—is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the Court otherwise orders, the Official Receiver shall make an application under subsection (1) on receiving a written request to do so from—

(a) creditors of the company holding not less than one-half in value of the total amount of the company's debts; or

(b) contributories of the company holding not less than three-quarters of the voting rights at general meetings of the company.

(3) If, on the hearing of an application made under subsection (1), the Court is satisfied that a public examination of the person to whom the application relates is warranted, it shall make an order directing such an examination to be held on a date and at a time and place specified in the order.

(4) On being served with a copy of an order made under subsection (3), the person concerned shall attend on the date and at the time and place specified in the order and be publicly examined—

(a) about the promotion, formation or management of the company; or

(b) about the conduct of its affairs, or conduct or dealings in relation to the company.

(5) The persons specified in subsection (6) may—

(a) participate in the public examination of a person under this section; and

(b) may question the person concerning the matters referred to in subsection (4).

(6) The following persons are specified for the purpose of subsection (5):

(a) the Official Receiver;

(b) the liquidator of the company;

(c) any person who has been appointed as special manager of the company's property or business;

(d) any creditor of the company who has submitted a proof;

(e) any contributory of the company.

436. Consequences of failure to attend public examination

(1) A person who, without reasonable excuse, fails at any time to attend the person's public examination under section 435 is guilty of a contempt of Court and is liable to be punished accordingly (in addition to any other punishment to which the person may be subject).

(2) If a person fails without reasonable excuse to attend the person's examination under section 434, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying

the examination, the Court may issue a warrant to be issued to a police officer or a prescribed officer of the Court—

(a) for the arrest of that person; and

(b) for the seizure of any documents or property in that person's possession.

(3) In such a case, the Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under it to be kept, in accordance with the directions of the Court, until such time as the Court orders.

437. Appointment and powers of provisional liquidator

(1) The Court may appoint a provisional liquidator either on or after, or at any time before, the making of a liquidation order in respect of a company.

(2) Only the Official Receiver or an authorised insolvency practitioner is eligible for appointment as a provisional liquidator.

(3) A provisional liquidator shall perform such functions and may exercise such powers as the Court may specify in the order appointing the provisional liquidator.

(4) The acts of a person appointed as provisional liquidator of a company are valid despite any defect in the person's appointment or qualifications.

438. Functions and powers of Official Receiver in relation to office of liquidator

(1) Subsections (2) to (7) have effect, subject to section 441 when the Court makes an order for the company to be liquidated.

(2) The Official Receiver becomes the liquidator of the company and continues in office until some other person becomes liquidator under this Part.

(3) The Official Receiver is the liquidator during any vacancy in the office of liquidator.

(4) At any time while liquidator of the company, the Official Receiver may convene separate meetings of the company's creditors and the company's contributories for the purpose of choosing a person to be liquidator of the company in place of the Official Receiver.

(5) The Official Receiver shall—

(a) as soon as practicable during the three months from and including the date on which the liquidation order was made, decide whether to exercise the power under subsection (4) to convene meetings;

(b) if in accordance with paragraph (a), the Official Receiver decides not to exercise that power—give notice of the decision, before the end of that period, to the Court and to the company's creditors and contributories; and

(c) (whether or not a decision to exercise that power has been made) exercise the power to convene meetings under subsection (4) if requested to do so by creditors who hold not less than one quarter in value of the total amount of the company's debts.

(6) If the duty imposed by subsection (5)(c) arises before the Official Receiver has performed the duty imposed by subsection (5)(a) or (b), the Official Receiver is not required to perform the latter duty.

(7) The Official Receiver shall include in a notice given under subsection (5)(b) an explanation of the creditors' power under subsection (5)(c) to require the Official Receiver to convene meetings of the company's creditors and contributories.

439. Power of Official Receiver to appoint liquidator in certain cases

(1) In the case of a liquidation ordered by the Court, the Official Receiver (being the liquidator) may, at any time, appoint a qualified person as liquidator instead.

(2) If meetings are held in accordance with a decision under section 438(5)(a), but no person is chosen to be liquidator as a result of those meetings, the Official Receiver shall decide whether a liquidator should be appointed in respect of the company.

(3) On deciding that such an appointment should be made, the Official Receiver shall appoint a qualified person as liquidator.

(4) Immediately after making an appointment under subsection (1) or (3), the Official Receiver shall notify the appointment to the Court.

(5) The person appointed shall, as soon as practicable (and not later than seven days) after being appointed—

(a) send a notice of the appointment to the company's creditors; or

(b) if, on application made to the Court, the Court so allows—advertise the appointment in accordance with the directions of the Court.

(6) If appointed under subsection (3), the person appointed shall state in the notice or advertisement—

(a) whether it is proposed to convene a general meeting of the company's creditors under section 442 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that section; and

(b) if it is not proposed to convene such a meeting—that the creditors are entitled under that section to require one to be convened.

440. Creditors' choice to prevail if meetings of creditors and contributors nominate different liquidators

(1) If a company is being liquidated by the Court and separate meetings of the company's creditors and the company's contributories are convened for the purpose of choosing a person to be liquidator of the company, the creditors and the contributories at their respective meetings may nominate a person to be the liquidator of the company.

(2) The liquidator is—

(a) the person nominated by the creditors; or

(b) if no person is so nominated—the person (if any) nominated by the contributories.

(3) If different persons are nominated, a contributory or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either—

(a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

441. Appointment of liquidator by the Court following administration or voluntary arrangement

(1) If a liquidation order is made immediately on the appointment of an administrator ceasing to have effect, the Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.

(2) If a liquidation order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part IX, the Court may appoint as liquidator of the company the person who is the supervisor at the time when the liquidation order is made.

(3) If the Court makes an appointment under this section, the Official Receiver—

(a) does not become the liquidator as provided by section 437(2); and

(b) has no duty under section 437(5)(a) or (b) to convene meetings of creditors or contributories.

442. Creditors' meeting may appoint liquidation committee

(1) If, after a liquidation order has been made, separate meetings of creditors and contributories have been convened for the purpose of choosing a person to be liquidator, those meetings may establish a liquidation committee to perform the functions imposed and to exercise the powers conferred on it by or under this Act.

(2) The liquidator (not being the Official Receiver) may at any time, if of the opinion that it is appropriate to do so, convene separate general meetings of the company's creditors and contributories for the purpose of—

(a) determining whether a liquidation committee should be established; and

(b) if it is so determined—of establishing it.

(3) The liquidator (not being the Official Receiver) shall convene such a meeting if requested to do so by creditors of the company holding not less than one-tenth in value of the total amount of the company's debts.

(4) If meetings of creditors and contributories are convened—

(a) under this section; or

(b) for the purpose of choosing a person to be liquidator,

and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide, or decides that a committee should not be established, such a committee is nevertheless required to be established, unless the Court otherwise orders.

(5) Except to the extent that the insolvency regulations otherwise provide, a liquidation committee may not, and may not be required to, perform its functions while the Official Receiver is liquidator.

(6) If, at the relevant time—

(a) there is no liquidation committee; and

(b) the liquidator is a person other than the Official Receiver,

the Cabinet Secretary shall perform the functions of such a committee except in so far as the insolvency regulations otherwise provide.

443. General functions of liquidator when company is liquidated by the Court

(1) The functions of the liquidator of a company that is being liquidated by the Court are—

(a) to ensure that the assets of the company are realised and distributed to the company's creditors; and

(b) if there is a surplus—to distribute the surplus to the persons entitled to it.

(2) If the liquidator of a company that is being liquidated is not the Official Receiver, the liquidator shall—

(a) provide the Official Receiver with such information;

(b) produce to the Official Receiver, and permit inspection by the Official Receiver of, such records and other documents; and

(c) give to the Official Receiver such other assistance,

as the Official Receiver may reasonably require for the purposes of performing the Official Receiver's functions in relation to the liquidation.

(3) A liquidator who, without reasonable excuse, fails to comply with a requirement made by the Official Receiver under subsection (2) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

444. Liquidator to assume control of company's property when liquidation order made

When—

(a) a liquidation order has been made; or

(b) a provisional liquidator has been appointed,

in respect of a company, the liquidator or the provisional liquidator shall assume control of all the property to which the company is or appears to be entitled.

445. Company's property to vest in liquidator

(1) When a company is being liquidated by the Court, the Court may, on the application of the liquidator, by order direct all or any part of the property belonging to the company or held by trustees on its behalf to vest in the liquidator in that capacity.

(2) On the making of such an order, the property to which the order relates vests in the liquidator.

(3) After giving such indemnity (if any) as the Court may direct, the liquidator may begin or defend, or continue, any legal proceedings that relate to that property or that it is necessary to begin or defend, or continue, for the purpose of effectively liquidating the company and recovering its property.

446. Duty of liquidator to convene final general meeting of company's creditors

(1) If, in the case of a company that is being liquidated by the Court, the liquidator (not being the Official Receiver) is satisfied that the liquidation of the company is for all practical purposes complete, the liquidator shall convene a final general meeting of the company's creditors.

(2) At the final meeting, those present shall—

(a) consider the liquidator's report of the liquidation; and

(b) determine whether the liquidator should be released under section 471.

(3) If appropriate, the liquidator may give the notice convening the final general meeting at the same time as giving notice of any final distribution of the company's property.

(4) The liquidator shall ensure that sufficient funds from the company's property are retained to cover the expenses of convening and holding the meeting required by this section.

447. Power of the Court to stay liquidation

(1) On the application of the liquidator, the Official Receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the liquidation ought to be stayed, the Court may, at any time after an order for liquidation is made, make an order staying the proceedings, either permanently or for a specified period, on such terms as the Court considers appropriate.

(2) Before making an order under subsection (1), the Court may require the Official Receiver to provide it with a report on any facts or matters that appear to the Official Receiver to be relevant to the application.

(3) The Official Receiver shall comply with such a requirement within such period as the Court specifies.

(4) Within seven days after the Court has made an order under this section, the company shall lodge a copy of the order with the Registrar for registration.

(5) If a company fails to comply with subsection (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to lodge the required copy, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

448. Settlement of list of contributories and application of assets

(1) As soon as practicable after making a liquidation order, the Court shall—

(a) settle a list of contributories, with power to rectify the register of members in all cases in which rectification is required; and

(b) take all practicable steps to have the company's assets collected, and applied in discharge of its liabilities.

(2) If it appears to the Court that it will not be necessary to make calls on, or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

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

449. Recovery of debts due from contributory to company

(1) At any time after making a liquidation order, the Court may make an order in respect of any contributory who is for the time being on the list of contributories requiring the contributory to pay, in accordance with the order, an amount due from the contributory (or from the estate of the person whom the contributor represents) to the company, exclusive of any amount payable by the contributor or the estate because of a call.

(2) In making such an order, the Court may—

(a) in the case of an unlimited company—allow to the contributory as a set-off money due to the contributory or the estate that the contributory represents from the company on any independent dealing or contract with the company (but not money due to the contributory as a member of the company in respect of a dividend or profit); and

(b) in the case of a limited company—make to a director or manager whose liability is unlimited, or to the estate of the director or manager, the same allowance.

(3) If, in the case of a company (whether limited or unlimited), all the creditors have been paid in full (together with interest at the official rate), money due on an account to a contributory from the company may be allowed to the contributory as a set off against any subsequent call.

450. Power of the Court to make calls from contributories

(1) At any time after making a liquidation order, and either before or after the Court has ascertained the sufficiency of the company's assets, it may—

(a) make calls on all or any of the contributories for the time being settled on the list of the contributories (to the extent of their liability) for payment of any money that the Court considers necessary—

(i) to satisfy the company's debts and liabilities and the expenses of liquidation; and

(ii) for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

451. Power of the Court to order money due to company to be paid into Central Bank

(1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Central Bank of Kenya to the account of the liquidator instead of to the liquidator.

(2) Such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(3) All money and securities paid or delivered into the Central Bank of Kenya in relation to a liquidation by the Court are subject in all respects to the orders of the Court.

452. Order made by the Court against contributory to be conclusive evidence that money ordered to be paid is due

(1) An order made by the Court on a contributory is conclusive evidence that any money appearing to be due or ordered to be paid by the contributory is due.

(2) Subsection (1) is subject to the exercise of any available right of appeal.

(3) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all legal proceedings.

453. Power of the Court to fix deadlines for proving claims

The Court may fix deadlines by which creditors are required to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

454. Court to adjust rights of contributories

The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

455. Power of the Court to make orders enabling creditors and contributories to inspect company's records

(1) At any time after making a liquidation order, the Court may make such order for inspection of the company's records by creditors and contributories as the Court considers appropriate.

(2) The creditors and contributories of the company are entitled to inspect all records in the company's possession or under its control, but except as provided by or under the authority of any other written law, no other persons are entitled to inspect those records.

456. Payment of expenses of liquidation

(1) If the assets of a company are insufficient to satisfy its liabilities, the Court may—

(a) make an order for the expenses incurred in the liquidation to be paid out of the company's assets; and

(b) direct that that payment be given such of priority as the Court considers appropriate.

(2) An order made under subsection (1) has effect irrespective of the provisions of this Act relating to preferential debts.

457. Power to arrest absconding contributory

(1) If, at any time either before or after making a liquidation order, the Court is satisfied on reasonable grounds that a contributory is—

(a) about to leave Kenya or otherwise to abscond; or

(b) has concealed or removed, or is about to conceal or remove, any of the contributory's property for the purpose of evading payment of calls,

it may issue a warrant authorising the contributory to be arrested and the contributory's documents and moveable personal property to be seized.

(2) In such a case, the Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under the warrant to be kept, in accordance with the directions of the Court, until such time as the Court orders.

458. Powers of the Court to be cumulative

Powers conferred on the Court by this Part are in addition to any existing powers to bring legal proceedings against a contributory or debtor of the company, or the assets of a contributory or debtor, for the recovery of calls or other amounts.

459. Power of the Court to delegate its powers to liquidator

(1) The insolvency regulations may enable or require all or any of the functions imposed or powers conferred on the Court with respect to the matters specified in

subsection (2) to be performed or exercised by the liquidator as an officer of the Court and in accordance with its directions.

(2) The following matters are specified for the purpose of subsection (1):

(a) the convening and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectification of the register of members if required;

(c) the collection and application of the assets;

(d) the payment, delivery, transfer of money, property or documents to the liquidator;

(e) the making of calls;

(f) the fixing of a period within which debts and claims have to be proved.

(3) This section does not authorise the liquidator—

(a) to rectify the company's register of members without the special approval of the Court; or

(b) if there is a liquidation committee—to make a call without its approval.

Division 7 — Liquidators

460. Style and title of liquidators

(1) The liquidator of a company is in all documents and communications relating to the liquidation of the company to be referred to—

(a) if a person other than the Official Receiver is liquidator—as "the liquidator" of the company; or

(b) if the Official Receiver is liquidator—as "the Official Receiver and liquidator" of the company.

(2) In neither case is the liquidator to be referred to by the liquidator's personal name.

(3) A liquidator who fails to take all reasonably practicable steps to ensure that that subsections (1) and (2) are complied with commits an offence and on conviction is liable to a fine not exceeding one hundred thousand shillings.

461. Offence to make corrupt inducement affecting appointment of liquidator

A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to obtaining the person's own appointment or nomination, or to obtaining or preventing the appointment or nomination of some other person, as the company's liquidator commits an offence and on conviction is liable to a fine not exceeding two million shillings.

462. Liquidator's functions: voluntary liquidation

(1) This section has effect if a company is in voluntary liquidation, but subject to section 463 (liquidator's functions—creditors' voluntary liquidation)in the case of a creditor's voluntary liquidation.

(2) The liquidator may—

(a) in the case of a members' voluntary liquidation—with the approval of a special resolution of the company; and

(b) in the case of a creditors' voluntary liquidation—with the sanction of the Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

exercise any of the powers specified in Part 1 of the Third Schedule (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without approval, exercise either of the powers specified in Part 2 of the Third Schedule (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part 3 of that Schedule.

(4) The liquidator may—

(a) exercise the Court's power of settling a list of contributories;

(b) exercise the Court's power of making calls;

(c) convene general meetings of the company for the purpose of obtaining its approval by special resolution or for such other purpose as the liquidator considers appropriate.

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

(6) If, in exercise of the powers conferred by this Act, the liquidator disposes of property of the company to a person who is connected with the company, the liquidator shall, if there is a liquidation committee, give notice to the committee of that exercise of the liquidator's powers.

(7) A liquidator who, without reasonable excuse, fails to comply with subsection (6) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(8) A list of contributories settled by a liquidator in accordance with the power conferred by subsection (4)(a) is evidence of the liability of the persons named in it as contributories, until the contrary is proved.

463. Liquidator's functions: creditors' voluntary liquidation

(1) If, in the case of a creditors' voluntary liquidation, a liquidator has been nominated by the company, the powers conferred on the liquidator by section 462 may not be exercised, except with the sanction of the Court, during the period before the holding of the creditors' meeting under section 406.

(2) Subsection (1) does not apply to the power of the liquidator—

(a) to assume control of all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; or

(c) to take all such other action as may be necessary for the protection of the company's assets.

(3) The liquidator shall—

(a) attend the creditors' meeting; and

(b) shall report to the meeting on any exercise by the liquidator of the liquidator's powers (whether or not under this section or under section 420 (questions relating to liquidation may be referred to the Court for determination) or section 471 (release of liquidator in the case of company liquidated by the Court).

(4) If—

(a) the company fails to comply with section 406(1) or (2); or

(b) the directors fail to comply with section 407(1) or (2),

the liquidator shall, within seven days after the relevant day, apply to the Court for directions as to the manner in which that default is to be remedied.

(5) In subsection (4), the relevant day is the day on which the liquidator was nominated by the company or the day on which the liquidator first became aware of the default, whichever is the later.

(6) A liquidator who, without reasonable excuse fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

464. Liquidator's functions: liquidation by the Court

(1) If a company is being liquidated by the Court, the liquidator may—

(a) with the approval of the Court or the liquidation committee (if there is one), exercise any of the powers specified in Parts 1 and 2 of the Third Schedule; and

(b) with or without that approval, exercise any of the general powers specified in Part 3 of that Schedule.

(2) If, in exercising the powers conferred on the liquidator by this Act, the liquidator—

(a) disposes of property of the company to a person who is connected with the company; or

(b) employs an advocate to assist the liquidator in performing the liquidator's functions,

the liquidator shall, if there is a liquidation committee, give notice to the committee of that exercise of the liquidator's powers.

(3) Subsection (2) does not apply if the Official Receiver is the liquidator.

(4) In a liquidation ordered by the Court, the exercise of the powers conferred by this section by the liquidator is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(5) A liquidator who, without reasonable excuse, fails to comply with subsection (2) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

465. Liquidator's functions: supplementary powers

(1) If a company is being liquidated by the Court, the liquidator may convene general meetings of the creditors or contributories for the purpose of ascertaining their wishes.

(2) The liquidator shall convene meetings at such times on such dates as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by a requisition signed by or on behalf of—

(a) creditors holding not less than one tenth of the total amount of the company's debts;

(b) contributories of the company holding not less than one-tenth of the voting rights at general meetings of the company.

(3) The liquidator may at any time apply to the Court for directions in relation to any particular matter arising in the liquidation.

(4) In accordance with this Part, the liquidator is required to use the liquidator's own discretion in the management of the assets and their distribution among the creditors.

(5) A person who is dissatisfied with an act or decision of the liquidator may apply to the Court for an order under subsection (6).

(6) On the hearing of an application made under subsection (5), the Court may —

(a) make an order confirming, reversing or modifying the act or decision complained of; and

(b) make such other order in the case as it considers appropriate.

(7) If, at any time after a liquidation application has been made to the Court against a person, the attention of the Court is drawn to the fact that the person is a member of an insolvent partnership or a partner of a limited liability partnership, the Court may make an order as to the future conduct of the insolvency proceedings.

(8) The reference in subsection (7) to a person includes an insolvent partnership or other body that may be liquidated under Part VII as an unregistered company.

(9) An order made under subsection (7)—

(a) may be made or given on the application of the Official Receiver, any authorised insolvency practitioner, the bankruptcy trustee of the partnership or any other interested person; and

(b) may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

466. Enforcement of liquidator's duties to lodge, deliver and make returns, accounts and other documents

(1) If a liquidator has—

(a) in lodging, delivering or making a return, account or other document—

(i) failed to prepare, make or lodge a return, account or other document as required by a provision of this Part; or

(ii) failed to give, publish or lodge a notice as required by such a provision; or

(b) in giving a notice that the liquidator is by law required to deliver, make or give—

(i) failed to prepare, make or lodge a return, account or other document as required by a provision of this Part; or

(ii) failed to give, publish or lodge a notice as required by such a provision,

and has failed to rectify the failure within fourteen days after the service on the liquidator of a notice requiring the liquidator to do so, any creditor or contributory of the company, or the Registrar, may make an application to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order directing the liquidator to rectify the failure within such period as may be specified in the order.

(3) The Court's order may provide for all costs of and incidental to the application to be borne by the liquidator.

(4) This section does not limit the operation of any enactment that provides for the imposition of fines or other penalties on a liquidator in respect of a failure referred to in this section.

467. Circumstances in which liquidator may be removed from office in the case of a voluntary liquidation

(1) This section applies to the removal from office and vacation of office of the liquidator of a company that is in voluntary liquidation.

(2) Subject to subsection (2), a liquidator may be removed from office only by an order of the Court or—

(a) in the case of a members' voluntary liquidation—by a general meeting of the company convened specially for that purpose; or

(b) in the case of a creditors' voluntary liquidation—by a general meeting of the company's creditors convened specially for that purpose.

(3) If the liquidator was appointed by the Court under section 416, a meeting such as is referred to in subsection (2) may be convened for the purpose of replacing the liquidator only if the liquidator considers it appropriate to do so or the Court so directs or the meeting is requested—

(a) in the case of a members' voluntary liquidation—by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting; or

(b) in the case of a creditors' voluntary liquidation—by creditors holding not less than one-half in value of the total amount of the company's debts.

(4) A liquidator (not being the Official Receiver) automatically vacates office if the liquidator ceases to hold an authorisation to act as an insolvency practitioner.

(5) A liquidator may, in the circumstances prescribed by the insolvency regulations, resign office by lodging with the Registrar a notice of resignation.

(6) If—

(a) in the case of a members' voluntary liquidation— a final meeting of the company has been held in accordance with section 402; or

(b) in the case of a creditors' voluntary liquidation—final meetings of the company and of the creditors have been held in accordance with section 463,

the liquidator whose report was considered at the meeting or meetings vacates office as soon as the liquidator has lodged with the Registrar a notice that the meeting has, or the meetings have, been held and of the decisions (if any) made at the meeting or meetings.

468. Liquidator may be removed only by the Court or by general meeting of creditors in the case of company being liquidated by the Court

(1) This section applies with respect to the removal from office and vacation of office of—

(a) the liquidator of a company that being liquidated by the Court; or

(b) a provisional liquidator.

(2) A liquidator may be removed from office only—

(a) by an order of the Court; or

(b) by a general meeting of the company's creditors convened specially for that purpose.

(3) A provisional liquidator may be removed from office only by an order of the Court.

(4) If—

(a) the Official Receiver is liquidator otherwise than as successor in accordance with section 438(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or

(b) the liquidator—

(i) was appointed by the Court otherwise than under section 440(3) or 441(1); or

(ii) was appointed by the Cabinet Secretary,

a general meeting of the company's creditors is to be convened for the purpose of replacing the liquidator in the circumstances specified in subsection (5).

(5) The circumstances referred to in subsection (4) are that—

(a) the liquidator considers it appropriate to convene a meeting of creditors;

(b) the Court directs such a meeting to be held; or

(c) the meeting is requested by creditors holding not less than one-quarter in value of the total amount of the company's debts.

(6) A liquidator or provisional liquidator (not being the Official Receiver) automatically vacates office on ceasing to be the holder of an authorisation to act as an insolvency practitioner.

(7) A liquidator may resign office by giving notice of the resignation to the Court.

(8) If a final meeting has been held in accordance with section 446, the liquidator whose report was considered at the meeting vacates office immediately after giving notice to the Court that the meeting has been held and of the decisions (if any) of the meeting.

(9) Within seven days after giving notice to the Court in accordance with subsection (8), the former liquidator shall lodge a copy of the notice with the Registrar for registration.

(10) A former liquidator who, without reasonable excuse, fails to comply with subsection (9) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

469. Release of liquidator in the case of company liquidated voluntarily

(1) This section applies with respect to the release of the liquidator of a company that is in voluntary liquidation.

(2) A person who has ceased to be a liquidator is entitled to be released from the liquidator's obligations with respect to the company with effect from the following time:

(a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against the liquidator's release or who has died—the time at which notice is lodged with the Registrar that the person has ceased to hold office as liquidator;

(b) in the case of a person who—

(i) has been removed from office by a general meeting of the company's creditors that has resolved against the liquidator's release, or by the Court; or

(ii) has vacated office under section 467(4),

such time as the Cabinet Secretary may, on the application of the person, determine;

(c) in the case of a person who has resigned—such time as may be prescribed by the insolvency regulations for the purposes of this paragraph;

(d) in the case of a person who has vacated office under section 467(6)(a)—the time at which that person vacated office;

(e) in the case of a person who has vacated office under section 467(6)(b)—

(i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release—such time as the Cabinet Secretary may, on an application by that person, determine; and

(ii) if that meeting has not resolved against that person's release —the time at which that person vacated office.

(3) If a liquidator is released in accordance with subsection (2), the liquidator is, with effect from whichever time specified in that subsection is relevant, discharged from all liability both in respect of acts or omissions of the liquidator's in the liquidation and otherwise in relation to conduct as liquidator.

(4) However, nothing in this section prevents the exercise, in relation to a person who has been released under subsection (2), of the Court's powers under section 504 (power of Court to make orders against delinquent directors, liquidators, etc).

470. Release of liquidator in the case of company liquidated by the Court

(1) This section applies with respect to the release of the liquidator of a company that is in liquidation by the Court, or of a provisional liquidator.

(2) On ceasing to be liquidator and being succeeded by another person as liquidator, the Official Receiver is released from the responsibilities a liquidator with effect from—

(a) if the successor was nominated by a general meeting of creditors or contributories, or was appointed by the Cabinet Secretary—the time at which the Official Receiver gives notice to the Court that the Official Receiver has been succeeded by another person; or

(b) if the successor is appointed by the Court—such time as the Court may determine.

(3) If the Official Receiver while a liquidator gives notice to the Cabinet Secretary that the liquidation is for all practical purposes complete, the Official Receiver is released with effect from such time as the Cabinet Secretary may determine.

(4) A person other than the Official Receiver who has ceased to be a liquidator is released with effect from whichever of the following times is relevant to the person:

(a) if the person has been removed from office by a general meeting of creditors that has not resolved against the person's release, or the person has died—the time at which notice is given to the Court that the person has been removed from office or has died;

(b) if the person has been removed from office—

(i) by a general meeting of creditors that has resolved against the person's release; or

(ii) by the Court or the Cabinet Secretary,

such time as the Cabinet Secretary may, on an application made by the person, determine;

(c) if the person has vacated office under section 468(7)—such time as the Cabinet Secretary may, on an application made by the person, determine;

(d) if the person has resigned as liquidator—such time as may be prescribed by the insolvency regulations for the purposes of this paragraph;

(e) if the person has vacated office under section 468(9) and the final meeting referred to in that subsection has resolved against the person's release—such time as the Cabinet Secretary may, on an application by the person, determine;

(f) if the person has vacated office under section 468(9) and the final meeting referred to in that subsection has not resolved against the person's release—the time at which the person vacated office.

(5) On the hearing of application to the Court of a person who has ceased to hold office as a provisional liquidator, the person is released with effect from such time as the Court may determine.

(6) On being released under this section, the Official Receiver or a liquidator or provisional liquidator is, with effect from the time specified in subsection (2), (3), (4) or (5), discharged from all liability both in respect of acts or omissions in the liquidation and otherwise in relation to conduct as liquidator or provisional liquidator.

(7) However, nothing in this section prevents the exercise, in relation to a person who has been released under this section, of the Court's powers under section 504 (power of Court to make orders against delinquent directors, liquidators, etc.).

Division 8 — Provisions applying to all kinds of liquidation

471. Preferential debts (general provision)

(1) The liquidator of a company that is in liquidation shall distribute the assets of the company available for the payment of creditors in accordance with the Second Schedule.

(2) Subsection (1) is subject to the provisions of this Part.

472. Preferential charge on property of company distrained within three months before making of liquidation order

(1) This section applies to a company that is being liquidated by the Court.

(2) If a person (whether or not a landlord or person entitled to rent) has distrained on the property of the company during the three months immediately preceding the date of the liquidation order, that property, or the proceeds of its sale, is charged for the benefit of the company with the preferential debts of the company to the extent that the company's assets are for the time being insufficient to satisfy them.

(3) If, because of a charge under subsection (2), a person surrenders property to a company or pays money to a company, the person ranks, in respect of the amount of the proceeds of sale of the property by the liquidator, or the amount money paid, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors because of the surrender or payment.

(4) This section does not limit the effect of section 430.

473. Expenses of liquidation to have priority over claims under floating charge

(1) The expenses of liquidating a company, so far as the assets of the company available for payment of general creditors are insufficient to meet those expenses, have priority over any claims to property comprised in or subject to any floating charge created by the company and are to be paid out of any such property accordingly.

(2) In subsection (1)—

(a) the reference to assets of the company available for payment of general creditors does not include an amount made available under section 474(2)(a);

(b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(i) the holders of debentures secured by, or holders of, the floating charge; and

(ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made restricting the application of subsection (1), in such circumstances as may be prescribed by the insolvency regulations, to expenses authorised or approved—

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them; or

(b) by the Court.

(4) References in this section to the expenses of the liquidation are to all expenses properly incurred in the liquidation, including the remuneration of the liquidator.

474. Share of assets to be made available for unsecured creditors where floating charge relates to company's property

(1) This section applies to a company in respect of which a floating charge relates to its property—

(a) if the company is in liquidation or under administration; or

(b) if a provisional liquidator is appointed in respect of it.

(2) If this section applies to a company, the liquidator, administrator or provisional liquidator—

(a) shall make available for the satisfaction of unsecured debts such portion of the company's net assets as is prescribed by the insolvency regulations for the purposes of this subsection; and

(b) may not distribute that part to the proprietor of a floating charge except to the extent that it exceeds the amount required for the satisfaction of unsecured debts.

(3) Subsection (2) does not apply to a company if—

(a) the company's net assets are less than the minimum prescribed by the insolvency regulations for the purposes of this subsection; and

(b) the liquidator, administrator or provisional liquidator believes that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(4) Subsection (2) also does not apply to a company if, or in so far as, it is disapplied by—

(a) a voluntary arrangement in respect of the company in accordance with Part IX; or

(b) a compromise or arrangement agreed under the Companies Act, 2015.

(5) Subsection (2) also does not apply to a company if—

(a) the liquidator, administrator or provisional liquidator applies to the Court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and

(b) as a result of such an application, the Court orders that subsection (2) is not to apply.

(6) In subsections (2) and (3) a company's net assets is the amount of its assets that would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) The regulations referred to in subsection (2) prescribing part of a company's net assets may, in particular, provide for its calculation—

(a) as a percentage of the company's net assets; or

(b) as an aggregate of different percentages of different parts of the company's net assets.

(8) In this section, "floating charge" means a charge that is a floating charge on its creation and that is created after the regulations referred to in subsection (2)(a) take effect.

475. Power of the Court to appoint special manager of company's business or property when company is in liquidation or provisional liquidator appointed

(1) If a company is in liquidation or a provisional liquidator is appointed in respect of the company, the Court may, on an application made under subsection

(2), appoint a person to be the special manager of the business or property of the company.

(2) An application to the Court to appoint a special manager may be made by the liquidator or provisional liquidator if it appears to the applicant that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) A special manager has such powers as the Court specifies in the special manager's appointment or in directions given as a result of an application by that manager.

(4) The Court's power to confer powers to the special manager includes power to direct that any provision of this Act that has effect in relation to a provisional liquidator or liquidator of a company has the same effect in relation to the special manager for the purposes of performing any of the functions of the provisional liquidator or liquidator.

(5) A special manager shall—

(a) give such security as may be prescribed by the insolvency regulations for the purposes of this section;

(b) prepare and keep such accounting records as may be so prescribed; and

(c) produce those records in accordance with the insolvency regulations to the Court or to such other persons as may be so prescribed.

(6) A special manager's appointment does not take effect until the security referred to in subsection (5)(a) has been given.

(7) A special manager who fails to comply with subsection (5)(b) or (c) is guilty of contempt of the Court and is liable to be punished accordingly (in addition to any other punishment to which the person may be subject).

476. Power of liquidator to disclaim onerous property

(1) The liquidator may, by the giving such notice as is prescribed by the insolvency regulations, disclaim any onerous property and may do so even if the liquidator has taken control of it, tries to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this section:

(a) an unprofitable contract;

(b) other property of the company that is unsalable 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 section—

(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; but

(b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(5) A notice of disclaimer may not be given under this section in respect of any property if—

(a) a person interested in the property has applied in writing to the liquidator, or a predecessor of the liquidator, requiring the liquidator or liquidator's predecessor to decide whether the property will be disclaimed or not; and

(b) thirty days from and including the date on which that application was made (or such extended period as the Court may allow) has expired without a notice of disclaimer having been given under this section in respect of the property.

(6) A person who has sustained loss or damage in consequence of the operation of a disclaimer under this section is a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the liquidation.

477. Special provisions relating to disclaimer of leaseholds

(1) The disclaimer under section 476 of any property comprising a leasehold interest does not take effect unless a copy of the disclaimer has been served on every person claiming under the company as under-lessee or mortgagee whose address is known to the liquidator and either—

(a) an application under section 479 has not been made with respect to that property within fourteen days from and including the date on which the last notice served under this subsection was served; or

(b) if such an application is made—the Court makes an order directing the disclaimer to take effect.

(2) If the Court makes an order under subsection (1)(b), it may also, instead of or in addition to any order it makes under section 479, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

478. Effect of disclaimer in relation to land subject to rentcharge

(1) If, as a result of the disclaimer under section 476 of land subject to a rent-charge, the land vests by operation of law in a person, the person is not subject to any liability in respect of amounts becoming due under the rentcharge except amounts that become due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has occupied it.

(2) The reference in subsection (1) to a person includes the State and to any a successor in title to the person.

479. General powers of the Court in respect of disclaimed property

(1) This section and section 480 apply to property that the liquidator has disclaimed in accordance with section 476.

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

(a) any person who claims an interest in the disclaimed property; or

(b) any person who is under a liability in respect of the disclaimed property, other than a liability discharged by the disclaimer.

(3) On the hearing of an application made under subsection (2), the Court may make an order, on such terms as it considers appropriate, 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 referred to in subsection (2)(b) or a trustee for such a person.

(4) The Court may make an order under subsection (3)(b) only if 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.

(5) The effect of an order made under this section is to be taken into account in assessing for the purpose of section 476(6) the extent of any loss or damage sustained by a person in consequence of the disclaimer.

(6) It is not necessary for an order under this section vesting property in a person to be completed by transfer.

480. Powers of the Court in respect of leaseholds held by company in liquidation

(1) The Court may not make an order under section 479 vesting a leasehold interest in a person claiming under the company as underlessee or mortgagee except on terms making the person—

(a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) if the Court considers appropriate—subject to the same liabilities and obligations as the person would be subject to if the lease had been assigned to the person at the commencement of the liquidation.

(2) For the purposes of an order under section 479 relating only to the part of the property comprising a lease, the requirements of subsection (1) apply as if the lease was the only property to which the order relates.

(3) If subsection (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under section 479 on the terms required under that subsection, the Court may make an order vesting the company's interest in the lease in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants under the lease.

(4) The Court may vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the company.

(5) If subsection (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under section 479, the person is excluded from all interest in the property.

481. Creditor not entitled to retain benefit of execution or attachment against liquidator unless creditor completes execution or attachment before commencement of liquidation

(1) If—

(a) a creditor—

(i) has issued execution against the goods or land of a company; or

(ii) has attached any debt due to it; and

(b) the company is subsequently liquidated,

the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator unless the creditor has completed the execution or attachment before the commencement of the liquidation.

(2) However—

(a) if a creditor has had notice of a meeting having been convened at which a resolution for voluntary liquidation is to be proposed—the date on which the creditor had notice is, for the purpose of subsection (1), substituted for the date of commencement of the liquidation;

(b) a person who, under a sale conducted by the enforcement officer or other officer charged with the execution of the writ goods of a company on which execution has been levied, purchases the goods in good faith acquires a good title to them as against the liquidator; and

(c) the Court may set aside the rights conferred on the liquidator by subsection (1) in favour of the creditor to such extent and subject to such terms as it considers just.

(3) For purposes of this Act—

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by its seizure or by any other event prescribed by the insolvency regulations for the purposes of this section.

482. Duties of judicial enforcement officers charged with execution of writs and other processes involving companies in liquidation

(1) This section applies if—

(a) a company's goods are taken in execution; and

(b) before their sale or the completion of the execution (whether by the receipt or recovery of the full amount of the levy)—notice is served on the judicial enforcement officer charged with execution of the writ or other process—

(i) that a provisional liquidator has been appointed;

(ii) that a liquidation order has been made; or

(iii) that a resolution for voluntary liquidation has been passed.

(2) If so required, the judicial enforcement officer concerned shall deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator.

(3) However, the costs of execution are a first charge or security right on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge or security right.

(4) If, under an execution in respect of a judgement for an amount exceeding fifty thousand shillings, a company's goods are sold or money is paid in order to avoid sale, the judicial enforcement shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for not less than fourteen days.

(5) If, within that period—

(a) notice is served on the judicial enforcement officer to the effect that—

(i) an application for the liquidation of the company has been made; or

(ii) a meeting has been convened at which there is to be proposed a resolution for voluntary liquidation; and

(b) an order is made or a resolution passed,

that officer shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

(6) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court considers appropriate.

(7) The insolvency regulations may increase or reduce the amount specified in subparagraph (4).

[Act No. 13 of 2017, Sch.]

483. Power of the Court to rescind contracts entered into by company in liquidation

(1) A person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, may make an application for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court considers appropriate.

(3) Damages payable to a person under the order are provable by the person as a debt in the liquidation.

484. Power of liquidator to transfer assets of company to its employees

(1) On the liquidation of a company (whether by the Court or voluntarily), the liquidator may, in accordance with this section, make any payment that the company has, before the commencement of the liquidation, decided to make under the Companies Act, 2015 to employees or former employees on cessation or transfer of business.

(2) After the liquidation has commenced, the liquidator may make any such provision to employees or former employees on cessation or transfer of business under the Companies Act, 2015 only if—

(a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the liquidation;

(b) the exercise of the power has been authorised by a resolution of the company; and

(c) the requirements of the company's articles (if any) as to the exercise of the power conferred by that section are complied with.

(3) A payment that can be made by a company under this section after the commencement of its liquidation may be made only out of the company's assets that are available for distribution to the company's members at the conclusion of the liquidation.

(4) If the company is being liquidated by the Court, the exercise by the liquidator of a power under this section is subject to the Court's control, and any creditor or

contributory may apply to the Court for an order giving directions with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) have effect irrespective of what is stated in any rule of law or in section 415.

485. Company in liquidation required to state that it is in liquidation in all invoices, letters and other communications

(1) A company that is in liquidation shall ensure that the following documents state that the company is in liquidation:

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property;

(b) each of the company's websites (if any).

(2) If the company fails to comply with a requirement under subsection (1), the company, and each officer who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

486. Interest on debts to be paid if surplus permits

(1) In a company liquidation, interest is payable in accordance with this section on any debt proved in the liquidation, including so much of any such debt as represents interest on the remainder.

(2) The liquidator shall, before applying any surplus remaining after the payment of the debts proved in a liquidation for any other purpose, apply the surplus in paying interest on those debts in respect of the periods during which they have been outstanding since the liquidation commenced.

(3) All interest under this section ranks equally (whether or not the debts on which it is payable rank equally).

(4) The rate of interest payable under this section in respect of any debt is the rate for the time being prescribed by the insolvency regulations for the purposes of this section.

(5) Interest payable under this section in respect of a debt is payable at the official rate.

487. Certain documents relating to company in liquidation to be exempt from stamp duty

(1) If a company is in liquidation, the following documents are exempt from stamp duty:

(a) every transfer relating solely to freehold or leasehold property, or to any interest in, any real or movable property, that forms part of the company's assets and that, after the execution of the transfer, either at law of in equity, is or remains part of those assets; and

(b) every writ, order or other document relating solely to—

(i) property of the company referred to in paragraph (a); or

(ii) any legal proceeding arising under the liquidation.

(2) Subsection (1) does not apply if the liquidation is a members' voluntary liquidation.

[Act No. 13 of 2017, Sch.]

488. Records of company in liquidation to be evidence

When a company is in liquidation, all records of the company and of the liquidator are (as between the contributories of the company) evidence of the truth of all matters purporting to be recorded in them, until the contrary is proved.

489. Liquidator to lodge periodic statements with Registrar of Companies with respect to current position of liquidation

(1) If the liquidation of a company is not completed within twelve months after its commencement, the liquidator shall, at such intervals as are prescribed by the insolvency regulations and until the liquidation is completed, lodge with the Registrar a statement containing the particulars so prescribed with respect to the proceedings in, and position of, the liquidation.

(2) A liquidator who fails to lodge a statement as required by subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), a liquidator continues to fail to lodge a statement as required by subsection (1), the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

490. Effect of resolutions passed at adjourned meetings of company's creditors and contributories

If a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is for all purposes taken to have been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

491. Court may order meetings to be held to ascertain wishes of creditors or contributories

(1) The Court may—

(a) as to all matters relating to the liquidation of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence); and

(b) if it considers appropriate, for the purpose of ascertaining those wishes—

(i) direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the Court directs; and

(ii) appoint a person to act as chairperson of any such meeting and report the result of it to the Court.

(2) In the case of creditors, the Court shall take into account the value of each creditor's debt.

(3) In the case of contributories, the Court shall take into account the number of votes conferred on each contributory.

492. Judicial notice to be taken of documents of the Court

In all proceedings under this Part, all courts and tribunals, all judges and persons acting judicially, and all officers of a court or tribunal, or employed in enforcing the process of a court or tribunal, are required to take judicial notice of—

(a) the signature of an officer of the High Court; and

(b) the official seal or stamp of that Court affixed to or impressed on any document made, issued or signed under a provision of this Act or the Companies Act, 2015, or any official copy of such a document.

493. Affidavits required to be sworn for purposes of this Part

(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Kenya—

(a) before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; or

(b) before any diplomat representing the Government of Kenya in any place outside Kenya.

(2) All courts, tribunals, judges and other persons acting judicially are required to take judicial notice of the seal or stamp or signature of any such court, tribunal, judge, person or diplomat affixed to, impressed on, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Division 9 — Dissolution of companies after liquidation

494. Dissolution (voluntary liquidation)

(1) This section applies to a company in voluntary liquidation if the liquidator has sent to the Registrar the liquidator's final account and return in accordance with section 402 or 414.

(2) As soon as practicable after receiving the account and return, the Registrar shall register them.

(3) At the end of three months from the registration of the account and return, the company is dissolved.

(4) However, the Court may, on the application of the liquidator or any other person who appears to the Court to have a legitimate interest in the matter, make an order deferring the date at which the dissolution of the company is to take effect for such period as the Court considers appropriate.

(5) Within seven days after an order is made under subsection (4), the person on whose application the order was made shall lodge with the Registrar a copy of the order for registration.

(6) A person who, without reasonable excuse, fails to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(7) If, after being convicted of an offence under subsection (6), a person continues to fail to lodge the required copy with the Registrar, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

495. Early dissolution of company

(1) This section applies when an order for the liquidation of a company has been made by the Court and the Official Receiver is the liquidator of the company.

(2) On being satisfied—

(a) that the realisable assets of the company are insufficient to cover the expenses of the liquidation; and

(b) that the affairs of the company do not require any further investigation,

the Official Receiver may apply to the Registrar for the early dissolution of the company.

(3) The Official Receiver may make such an application only if at least thirty days' notice of the Official Receiver's intention to make the application has been given to the company's creditors and contributories.

(4) On giving that notice, the Official Receiver is, subject to any directions given under section 496, no longer required to perform any functions imposed on the Official Receiver in relation to the company, its creditors or contributories because of any provision of this Act, apart from a duty to make an application under subsection (2).

(5) As soon as practicable after receiving the Official Receiver's application, the Registrar shall register it.

(6) At the end of the three months from and including the date of the registration of the application the company is dissolved.

496. Consequence of notice given under section 495(3)

(1) If a notice has been given in accordance with section 495(3), the Official Receiver or any creditor or contributory of the company may apply to the Court for directions under this section.

(2) The grounds on which such an application may be made are—

(a) that the realisable assets of the company are sufficient to cover the expenses of the liquidation;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section—

(a) are directions making such provision as the Court considers appropriate for enabling the liquidation of the company to proceed as if no notice had been given under section 495(3); and

(b) may, in the case of an application under section 495(7), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Court considers appropriate.

(4) Within seven days after directions are given under this section, the person on whose application directions were given, shall lodge with the Registrar for registration a copy of the directions or determination.

(5) A person who, without reasonable excuse, fails to lodge a copy as required by subsection (4) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), the person continues to fail to lodge the relevant copy with the Registrar for registration, the person commits a further offence on each day on which the failure continues and

on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

497. Dissolution otherwise than under sections 494-496

(1) This section applies to a notice that is—

(a) served for the purposes of section 468(9); or

(b) from the Official Receiver that the liquidation of a company by the Court is complete.

(2) As soon as practicable after such a notice is lodged for registration, the Registrar shall register it.

(3) At the end of the three months from and including date of registration of the notice, the company is dissolved.

(4) However, on the application of the Official Receiver or any other person who appears to the Court to have a legitimate interest in the matter, the Court may make an order deferring the date at which the dissolution of the company is to take effect to such other date as the Court considers appropriate.

(5) Within seven days after an order is made under subsection (4), the person on whose application the order was made shall lodge with the Registrar a copy of the order for registration.

(6) A person who, without reasonable excuse, fails to lodge a copy of the order as required by subsection (5) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(7) If, after being convicted of an offence under subsection (6), a person continues to fail to lodge the required copy with the Registrar, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 10 — Offences relating to conduct before and during liquidation and criminal proceedings relating to those offences

498. Offence involving commission of fraudulent acts in anticipation of liquidation

(1) This section applies in relation to a company—

(a) in respect of which the Court has made a liquidation order; or

(b) that has passed a resolution for the voluntary liquidation of the company.

(2) An officer or former officer of the company commits an offence if, within the twelve months immediately preceding the commencement of the liquidation of the company, the officer or former officer—

(a) concealed any part of the company's property to the value of fifty thousand shillings or more; or concealed any debt due to or from the company;

(b) fraudulently removed any part of the company's property to the value of fifty thousand shillings or more;

(c) concealed, destroyed, mutilated or falsified any document affecting or relating to the company's affairs or property;

(d) made any false entry in any document affecting or relating to the company's affairs or property;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's affairs or property; or

(f) pawned, created a security right or disposed of any property of the company that has been obtained on credit and has not been paid for.

(3) Subsection (3)(f) does not apply if the pawning, creation of a security right or disposal was done in the ordinary course of the company's business.

(4) An officer or former officer of the company also commits offence—

(a) if, within the twelve months period referred to in subsection (2), the officer or former officer has been privy to the doing by others of any of the acts referred to in paragraphs (c), (d) and (e) of that subsection; or

(b) if, at any time after the commencement of the liquidation, the officer or former officer—

(i) does any of the acts referred to in paragraphs (a) to (f) of that subsection; or

(ii) is privy to the doing by others of any of the acts referred to in paragraphs (c) to (e) of that subsection.

(5) In a prosecution for an offence under—

(a) paragraph (a) or (f) of subsection (2); or

(b) subsection (4) in respect of an act referred to in either of those paragraphs,

it is a defence to prove that the officer or former officer had no intention to defraud.

(6) In a prosecution for an offence under—

(a) paragraph (c) or (d) of subsection (2); or

(b) subsection (4) in respect of an act referred to in either of those paragraphs,

it is a defence to prove that the officer or former officer had no intention to conceal the state of affairs of the company or to defeat the law.

(7) If property is pawned, encumbered by a security right or disposed of in circumstances that constitute an offence under subsection(2)(f), a person who takes in pawn or security right, or otherwise receives, the property knowing it to have been pawned, encumbered by a security right or disposed of in such circumstances, commits an offence.

(8) A person found guilty of an offence under this section is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(9) The insolvency regulations may increase or reduce the amounts specified in subsection (2)(a) and (b).

[Act No. 13 of 2017, Sch.]

499. Offences involving transactions to defraud creditors of company in liquidation

(1) This section applies in relation to a company—

(a) in respect of which the Court has made a liquidation order; or

(b) that has passed a resolution for the voluntary liquidation of the company.

(2) An officer or former officer of the company commits an offence if the officer or former officer—

(a) has made or caused to be made a gift or transfer of, or created a security right on, or has caused or connived at the levying of execution against, the company's property; or

(b) has concealed or removed any part of the company's property since, or within the two months preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company.;

(3) A person is not liable to be charged with an offence under subsection (2) if the conduct alleged to constitute the offence occurred more than five years before the commencement of the liquidation.

(4) In a prosecution for an offence under subsection (2)(a), it is a defence to prove that the officer or former officer did not, at the time of the alleged offence, have any intent to defraud the company's creditors.

(5) An officer or former officer of company who is found guilty of an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment or a fine not exceeding two years, or to both.

[Act No. 13 of 2017, Sch.]

500. Offence involving misconduct committed in course of liquidation of company

(1) This section applies in relation to a company that is in liquidation, whether voluntary or by the Court.

(2) An officer or former officer of the company commits an offence if the officer or former officer—

(a) does not to the best of the officer's or former officer's knowledge and belief fully and truly disclose to the liquidator all of the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary course of the company's business);

(b) does not deliver to the liquidator, or in accordance with the directions of the liquidator, all such part of the company's property as is under the control of the officer or former officer, and that the officer or former officer is required by law to deliver to the liquidator;

(c) fails to deliver to the liquidator, or in accordance with the liquidator's directions, all documents under the control of the officer or former officer that belong to the company and that the officer or former officer is required by law to deliver to the liquidator;

(d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator of that knowledge or belief as soon as is practicable; or

(e) after the commencement of the liquidation—prevents the production of any document affecting or relating to the company's affairs or property.

(3) An officer or former officer also commits an offence if, after the commencement of the liquidation, the officer or former officer attempts to account for any part of the company's property by means of fictitious losses or expenses.

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(4) An officer or former officer is presumed, in the absence of evidence to the contrary, to have committed an offence under subsection (3) if the officer or former officer has made an attempt of the kind referred to in that subsection at a meeting of the company's creditors held within the twelve months immediately preceding the commencement of the liquidation.

(5) In a prosecution for an offence under subsection (2)(a), (b) or (c), it is a defence to prove that the officer or former officer had no intention to defraud.

(6) In a prosecution for an offence under subsection (2)(e), it is a defence to prove that the officer or former officer had no intention to conceal the state of affairs of the company or to defeat the law..

(7) An officer or former officer found guilty of an offence under this section is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, to both.

501. Offence to falsify documents in relation to company in liquidation

(1) This section applies in relation to a company that is in liquidation, whether voluntary or by the Court.

(2) An officer or contributory of the company commits an offence if, during the liquidation, the officer or contributory, with intent to defraud or deceive the company or any other person—

(a) destroys, damages, alters or falsifies a security or other document of the company; or

(b) makes or is privy to the making of a false or fraudulent entry in any record or other document of the company.

(3) A person who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, to both.

502. Offence to make material omission from statement relating to financial position of company in liquidation

(1) This section applies to a company that is in liquidation, whether voluntary or by the Court.

(2) An officer or former officer of the company commits an offence if, during the liquidation, the officer or former officer makes a material omission from a statement relating to the company's financial position.

(3) An officer or former officer of the company is also taken to have committed an offence under subsection (2) if, before the commencement of the liquidation, the officer or former officer has made any material omission from a statement relating to the company's financial position.

(4) In a prosecution for an offence under this section, it is a defence to prove that the officer or former officer had no intention to defraud.

(5) A person who is found guilty of an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for twelve months, or to both.

503. Offence to make false representations to creditors of company in liquidation

(1) This section applies to a company that is in liquidation, whether voluntary or by the Court.

(2) An officer or former officer of the company commits an offence if—

(a) the officer or former officer makes a false representation; or

(b) does any other fraudulent act,

for the purpose of obtaining the consent of the company's creditors or any of them to an agreement relating to the company's affairs or to the liquidation.

(3) An officer or former officer of the company is also to be taken to have committed an offence under subsection (2) if, before the commencement of the liquidation, the officer or former officer—

(a) made any false representation; or

(b) did any other fraudulent act,

for the purpose of obtaining that consent.

(4) An officer or former officer who is found guilty of an offence under this section is liable on conviction to a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years, or to both.

504. Power of the Court to make orders against delinquent directors, liquidators, etc

(1) This section applies to the following persons:

(a) an officer or former officer of a company that is in liquidation (whether by the Court or voluntarily);

(b) a person who is or has acted as the liquidator of such a company;

(c) not being a person referred to in paragraph (a) or (b)—a person who has been concerned in the promotion, formation or management of such a company.

(2) If, during the course of the liquidation of a company, it appears that a person to whom this section applies has or may have—

(a) misapplied or retained, or become accountable for, money or property of the company; or

(b) committed misfeasance or a breach of any fiduciary or other duty in relation to the company,

the Official Receiver, the liquidator of the company or a creditor or contributory of the company may make an application to the Court to conduct an examination under subsection (6).

(3) The reference in subsection (2) to misfeasance or a breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of the liquidator's functions as liquidator of the company.

(4) An application under subsection (2) may be made in relation to a person who has acted as liquidator of the company only with the approval of the Court given after the person has been released from the responsibilities of liquidator.

(5) A contributory may make an application under subsection (2) only with the approval of the Court.

(6) On the hearing of an application made under subsection (2), the Court may undertake an examination into the conduct of the person in relation to whom the application was made.

(7) If, at the conclusion of the examination, the Court finds that the person examined has engaged in conduct of a kind referred to in subsection (2), it may make an order compelling the person—

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the Court considers appropriate; or

(b) to contribute such amount to the company's assets as compensation for the misfeasance, breach of fiduciary or other duty as the Court considers fair and reasonable.

505. Power of the Court to make orders against officers of company and others found to have participated in fraudulent trading by company in liquidation

(1) A liquidator of a company may make an application to the Court to make an order under subsection (2) if—

(a) in the course of the liquidation of the company, the liquidator forms the view that a 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; and

(b) the liquidator believes that specified persons participated (directly or indirectly) in the business with the knowledge that the business was being carried on in that manner.

(2) If, on hearing an application made under subsection (1), the Court finds that the persons specified in the application did in fact participate (directly or indirectly) in a business of the company with the knowledge that it was being carried on in the manner referred to in subsection (1)(a), it may order those persons (or any of them) to make such contributions to the company's assets as the Court considers fair and reasonable.

(3) The persons specified in an application made under subsection (2) are entitled to be served with a copy of the application and to appear and be heard as respondents at the hearing of the application.

(4) If the Court makes an order against a person under subsection (2), it may also make an order disqualifying the person from—

(a) being or acting as a director of a company or a partner of a limited liability partnership;

(b) being or acting as a liquidator, provisional liquidator or administrator of a company or limited liability partnership;

(c) being or acting as a supervisor of a voluntary arrangement approved by the company or a limited liability partnership; or

(d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a company or limited liability partnership,

for such period, not exceeding fifteen years, as may be specified in the order.

506. Power of the Court to make orders against officers of company engaging in wrongful trading

(1) This section applies—

(a) to a company that is in insolvent liquidation; and

(b) to a person who, at a time before the commencement of the liquidation, was an officer of the company.

(2) For the purposes of this section—

(a) a company is in insolvent liquidation if, at the time the liquidation commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation; and

(b) the person in respect of whom an application is made under subsection (3) is the respondent to the application.

(3) If, in the course of the liquidation of a company, it appears to the liquidator that a person to whom this section applies knew or ought to have known that there was no reasonable prospect that the company would avoid being placed in insolvent liquidation, the liquidator may make an application to the Court for an order under subsection (5).

(4) The Court may hear an application made under subsection (3) only if the person in respect of whom the application was made has been served with a copy of the application.

(5) On the hearing of an application made under subsection (3), the Court may make an order declaring the respondent to be liable to make such contribution (if any) to the company's assets as the Court considers appropriate, but only if it is satisfied that, at the relevant time, the respondent knew or ought to have known that there was no reasonable prospect that the company would avoid being placed in insolvent liquidation.

(6) However, the Court may not make such an order if satisfied that the respondent took such steps to avoid potential loss to the company's creditors as the respondent ought reasonably to have taken, assuming that the respondent knew that there was no reasonable prospect of the company avoiding going into solvent liquidation.

(7) Nothing in this section affects the operation of section 505.

(8) If the Court makes an order against a person under subsection (5), it may also make an order disqualifying the person from—

(a) being or acting as a director of a company or limited liability partnership;

(b) being or acting as a liquidator, provisional liquidator or administrator of a company or limited liability partnership;

(c) being or acting as a supervisor of a voluntary arrangement approved by the company or limited liability partnership; or

(d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a company or limited liability partnership,

for such period, not exceeding fifteen years, as may be specified in the order.

507. Supplementary provisions relating to proceedings under sections 505 and 506

(1) On the hearing of an application under section 505 or 506, the liquidator may personally give evidence or call witnesses.

(2) If the Court makes an order under section 505 or 506, it may make such further orders as it considers appropriate for giving effect to the order.

(3) In particular, the Court may—

(a) provide for the liability of any person under the order to be a charge or security right—

(i) on any debt or obligation due from the company to the person; or

(ii) on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in the person, or any other person on the person's behalf, or any other person who claims as an assignee from or through the person liable, or any person acting on that person's behalf; and

(b) from time to time make such further order as may be necessary for enforcing a charge or security right imposed under paragraph (a).

(4) For the purposes of subsection (3)(a)(ii), "assignee"—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the order is made.

(5) If the Court makes an order under section 505 or 506 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person, and any interest on the debt, ranks in priority after all other debts owed by the company and after any interest on those debts.

(6) The Court can make an order under section 505 or 506 even if the person concerned may be criminally liable in respect of matters giving rise to the making of the order.

[Act No. 13 of 2017, Sch.]

508. Director of company in insolvent liquidation prohibited from being director of, or being involved with, any other company that is known by a prohibited name

(1) This section applies to a person if—

(a) a company is in insolvent liquidation on or after the commencement of this section; and

(b) the person was a director of the company at any time during the twelve months immediately preceding the date on which the liquidation of the company commenced.

(2) For the purposes of this section, a name is a prohibited name in relation to such a person if—

(a) it is a name by which the company was known at any time during that period of twelve months; or

(b) it is a name that is so similar to a name of the kind referred to in paragraph (a) as to suggest an association with the company.

(3) Except with approval of the Court, or in such circumstances as may be prescribed by the insolvency regulations, a person to whom this section applies shall not at any time during the five years from and including the date on which the liquidation of the company commenced—

(a) be a director of any other company, or any limited liability partnership, that is known by a prohibited name;

(b) in any way (directly or indirectly) be concerned or take part in the promotion, formation or management of any such company or partnership; or

(c) in any way (directly or indirectly) be concerned or take part in the carrying on of a business carried on (otherwise than by a company or limited liability partnership) under a prohibited name.

(4) A person who contravenes this section commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(5) A reference in this section, in relation to a time, to a name by which a company or limited liability partnership is known is a reference to the name of the company or partnership at that time or to any name under which the company or partnership carried on business at that time.

(6) For the purposes of this section, a company is in insolvent liquidation if, at the time the liquidation commences, the company's assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation.

(7) In this section, “company” includes a company to which Part VII applies.

509. Circumstances in which persons are personally liable for debts of company

(1) A person is personally responsible for all the relevant debts of a company if at any time—

(a) the person is involved in the management of the company in contravention of section 508; or

(b) while involved in the management of the company—the person acts or is willing to act on instructions given (without the approval of the Court) by a person to whom subsection (2) applies.

(2) This subsection applies to the following persons:

(a) a person who is involved in the management of the company in contravention of section 508;

(b) a person who is subject to a disqualification order or disqualification undertaking, or foreign restrictions, under the Companies Act, 2015;

(c) a person who is subject to any other restriction or disability prescribed by the insolvency regulations for the purposes of this section.

(3) If, because of subsection (1), a person is personally responsible for the relevant debts of a company, the person is jointly and severally liable for those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(4) For the purposes of this section, the relevant debts of a company are—

(a) in relation to a person who is personally responsible under paragraph (a) of subsection (1)—such debts and other liabilities of the company as are incurred at a time when the person was involved in the management of the company; and

(b) in relation to a person who is personally responsible under paragraph (b) of that subsection—such debts and other liabilities of the company

as are incurred at a time when the person was acting or was willing to act on instructions given as referred to in that paragraph.

(5) For the purposes of this section, a person is involved in the management of a company if the person—

(a) is a director of the company; or

(b) is concerned, whether directly or indirectly, or takes part, in the management of the company.

(6) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the approval of the Court) by a person to whom subsection (2) applies is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

(7) In this section, "company" includes a company to which Part VII applies.

510. Prosecution of delinquent officers and members of company in liquidation

(1) If, in the course of liquidating a company, the Court concludes that a person who was at the relevant time a past or present officer, or a member, of the company may have committed an offence in relation to the company for which the person is criminally liable, the Court may (either on the application of a person interested in the liquidation or on its own initiative) direct the liquidator to report the matter to the Official Receiver.

(2) If, in the case of a company being liquidated by the Court, the liquidator (not being the Official Receiver) concludes that a person who, at the relevant time was a past or present officer, or a member, of the company, may have committed an offence in relation to the company for which the person is criminally liable, the liquidator shall report the matter to the Official Receiver.

(3) If, in the course of a voluntary liquidation, the liquidator concludes that a person who, at the relevant time, was a past or present officer, or a member, of the company, may have committed an offence in relation to the company for which the person is criminally liable, the liquidator shall immediately report the matter to the Official Receiver.

(4) In making a report to the Official Receiver in accordance with subsection (1), (2) or (3), the liquidator shall provide the Official Receiver with—

(a) such information; and

(b) such access to and facilities for inspecting and taking copies of documents,

as the Official Receiver reasonably requires and the liquidator is reasonably able to give or provide.

(5) As soon as practicable after receiving a report of a matter in accordance with subsection (1), (2) or (3), the Official Receiver shall forward the report to the Attorney General for further investigation, together with—

(a) the information and documents (if any) given or provided in accordance with subsection (4); and

(b) such observations on the report and on the information and documents (if any) as the Official Receiver considers relevant.

(6) If the liquidator of a company being liquidated by the Court is the Official Receiver and the Official Receiver concludes that a person who, at the relevant time

was a past or present officer, or a member, of the company, may have committed an offence in relation to the company for which the person is criminally liable, the Official Receiver shall immediately report the matter to the Attorney General for further investigation, together with such observations on the matter as the Official Receiver considers relevant.

(7) On receiving a report made under subsection (5) or (6), the Attorney General shall investigate the matter reported and such other matters relating to the affairs of the company as appear to the Attorney General to require investigation.

(8) For the purpose of an investigation under subsection (7), the Attorney General may exercise any of the powers conferred on an inspector appointed under the Companies Act, 2015 to investigate a company's affairs.

(9) If, in the course of a voluntary liquidation, the Court concludes that—

(a) any past or present officer of the company, or any member of it, has committed an offence as referred to in subsection (1); and

(b) no report with respect to the matter has been made by the liquidator in accordance with subsection (3),

the Court may, on the application of any person interested in the liquidation or on its own initiative, direct the liquidator to make such a report.

(10) On the making of a report in accordance with subsection (9), this section has effect as though the report had been made in accordance with subsection (3).

511. Obligations arising under section 510

(1) For the purpose of an investigation by the Attorney General under 510(4), a person has the same obligation to produce documents or give information, or otherwise assist the Attorney General, as the person would have in relation to an inspector appointed under the Companies Act, 2015.

(2) An answer given by a person to a question put to the person in exercise of the powers conferred by section 510(8) may be used in evidence against the person.

(3) However, in criminal proceedings in which that person is charged with an offence to which this section applies—

(a) evidence relating to the answer may not be adduced; and

(b) questions relating to it may not be asked, by or on behalf of the prosecution,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(4) This section applies to all offences other than an offence under sections 108 and 114 of the Penal Code (Cap. 63) (which respectively deal with false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(5) If criminal proceedings are begun by the Director of Public Prosecutions following an investigation under section 510(7), the liquidator and every officer and agent of the company past and present (other than the defendant) shall provide the Director of Public Prosecutions with such assistance in connection with the prosecution as the liquidator, officer or agent is reasonably able to give.

(6) In subsection (5), "agent" includes any bank or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If a person fails to provide assistance as required by subsection (5), the Court may, on the application of the Director of Public Prosecutions or the Attorney General, make an order directing the person to comply with that subsection.

(8) If the application is made with respect to a liquidator, the Court may also make an order directing the costs to be borne by the liquidator personally.

(9) However, the Court may not make such an order if it is established that the failure to comply was due to the liquidator having insufficient assets of the company to enable the liquidator to provide the required assistance.

PART VII — LIQUIDATION OF UNREGISTERED COMPANIES

512. Meaning of "unregistered company" for purposes of this Part

For the purposes of this Part, "unregistered company" includes any association and any company, other than a company registered under the Companies Act, 2015.

513. Liquidation of unregistered companies

Subject to the provisions of this Part—

(a) any unregistered company may be liquidated under Part VI; and

(b) the provisions of that Part relating to liquidation apply to an unregistered company.

(2) An unregistered company cannot be liquidated under this Part voluntarily.

514. Circumstances in which unregistered company can be liquidated

(1) The circumstances in which an unregistered company can be liquidated are as follows:

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of liquidating its affairs;

(b) if the company is unable to pay its debts;

(c) if the Court is of opinion that it is just and equitable that the company should be liquidated.

(2) An unregistered company is, for the purposes of subsection (1)(b), unable to pay its debts if there is a creditor, by assignment or otherwise, to which the company owes an amount exceeding seventy-five thousand shillings then due and—

(a) the creditor has served on the company, by leaving at its principal place of business, or by delivering to an officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a written demand requiring the company to pay the amount due; and

(b) the company has, within the twenty-one days after the service of the demand, failed to pay the amount or to secure or compound for it to the creditor's satisfaction.

(3) The amount of money for the time being specified in subsection (2) is subject to increase or reduction by the insolvency regulations, but no increase in the amounts so specified affects any case in which the liquidation application was made before the increase took effect.

(4) An unregistered company is, for the purposes of subsection (1)(b), also unable to pay its debts if legal proceedings have been brought against any member of the company for a debt or demand due, or claimed to be due, from the company, or from the member as such, and—

(a) notice of the bringing of the proceedings has been served on the company by leaving it at the company's principal place of business (or by delivering it to an officer of the company, or by otherwise serving it in such manner as the Court may approve or direct); and

(b) the company has not within twenty-one days after service of the notice —

(i) paid, secured or compounded for the debt or demand;

(ii) obtained a stay to the proceedings; or

(iii) indemnified the defendant to the defendant's reasonable satisfaction against the proceedings, and against all costs, damages and expenses to be incurred by the defendant because of it.

(5) An unregistered company is, for the purposes of subsection (1)(b), also unable to pay its debts—

(a) if execution or other process issued on a judgment, decree or order obtained in any Court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(b) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

(6) An unregistered company is also unable to pay its debts for the purposes of subsection (1)(b) if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(7) In this section (3), "officer", in relation to an unregistered company, means the secretary, or a director, manager or principal officer, of the company.

515. Company incorporated outside Kenya may be liquidated though dissolved

(1) If a company incorporated outside Kenya that has been carrying on business in Kenya ceases to carry on business there, it can be liquidated as an unregistered company under this Act.

(2) Subsection (1) has effect even if the company has been dissolved or has otherwise ceased to exist as a company in accordance with the laws of the country under which it was incorporated.

516. Contributories in liquidation of unregistered company

(1) If an unregistered company is in liquidation, each person is a contributory who is liable—

(a) to pay or contribute to the payment of any debt or liability of the company;

(b) to pay or contribute to the payment of any amount for the adjustment of the rights of members among themselves; or

(c) to pay or contribute to the payment of the expenses of liquidating the company.

(2) Each contributory is liable to contribute to the company's assets all amounts due from the contributory in respect of the contributory is liable under subsection (1).

517. Power of the Court to stay or restrain proceedings

The provisions of this Part with respect to staying or restraining legal proceedings against a company after the making of an application for liquidation and before the making of a liquidation order extend, if the application to stay or restrain is made by a creditor, to legal proceedings against a contributory of an unregistered company.

518. Actions stayed on liquidation order

If an order has been made for liquidating an unregistered company, no legal proceedings may be begun or continued against a contributory of the company in respect of any debt of the company, except by approval of the Court, and subject to such terms as the Court may impose.

519. Provisions of this Part to be cumulative

(1) The provisions of this Part with respect to unregistered companies are in addition to those of Part VI with respect to the liquidation of companies by the Court.

(2) The Court or liquidator may exercise any powers or do any act in the case of unregistered companies that might be exercised or done by it or by the liquidator in liquidating a company that is registered under the Companies Act, 2015.

PART VIII — ADMINISTRATION OF INSOLVENT COMPANIES

Division 1 — Introductory provisions: nature and objective of administration

520. Interpretation: Part VIII

In this Part—

"administrator", in relation to a company, means a person appointed under this Part to manage the company's affairs and property, and, if the context requires, includes a former administrator;

"creditors' meeting" means a meeting of creditors of a company under administration that is convened by the administrator as provided by the insolvency regulations;

"enters administration" has the meaning given by section 521;

"floating charge" means a charge that is a floating charge on its creation;

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by section 534 (holder of floating charge may appoint administrator of company);

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

"objective of administration" means an objective specified in section 522.

521. What is administration?

For the purposes of this Act—

(a) a company is "under administration" while the appointment of an administrator of the company continues to have effect;

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

(c) a company ceases to be under administration when the appointment of an administrator of the company ends in accordance with this Part; and

(d) a company does not cease to be under administration only because an administrator vacates office (whether through resignation, death, removal or otherwise).

522. The objectives of administration

(1) The objectives of the administration of a company are the following:

(a) to maintain the company as a going concern;

(b) to achieve a better outcome for the company's creditors as a whole than would likely to be the case if the company were liquidated (without first being under administration);

(c) to realise the property of the company in order to make a distribution to one or more secured or preferential creditors.

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

(3) The administrator shall perform the administrator's functions with the objective specified in subsection (1)(a) unless the administrator believes either—

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

(b) that 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 the administrator's functions with the objective specified in subsection (1)(c) only if—

(a) the administrator believes that it is not reasonably practicable to achieve either of the objectives specified in subsection (1)(a) and (b); and

(b) the administrator does not unnecessarily harm the interests of the creditors of the company as a whole.

Division 2 — Appointment of administrators otherwise than by the Court

523. Who can appoint an administrator?

A person may be appointed as administrator of a company—

(a) by administration order of the Court in accordance with Division 3;

(b) by the holder of a floating charge under section 534; or

(c) by the company or its directors under section 541.

524. Duty of administrator

The administrator of a company shall perform the administrator's functions as quickly and efficiently as is reasonably practicable.

525. Status of administrator

An administrator is an officer of the Court, whether or appointed by the Court or not.

526. Qualification for appointment of administrators

A person may be appointed as administrator of a company only if the person is an authorised insolvency practitioner.

527. Administrator not to be appointed if company is already under administration

(1) Except as provided by subsection (2), a person may not be appointed as administrator of a company that is already under administration.

(2) Subsection (1) is subject to sections 606 to 613 and sections 616 to 619.

528. Administrator not to be appointed if company is in liquidation

(1) A person may not be appointed as administrator of a company that is in liquidation because of—

(a) a resolution for voluntary liquidation; or

(b) a liquidation order.

(2) Subsection (1)(a) is subject to section 557 (power of liquidator to make an application for administration).

(3) Subsection (1)(b) is subject to sections 556 (application if company is subject to a floating charge).

529. Administrator not to be appointed in respect of banking, finance and insurance companies

(1) A person may not be appointed under this Part as administrator of—

(a) a company that is a bank; or

(b) a company that enters into contracts of insurance or carries on insurance business.

(2) Subsection (1) is subject to section 35A of the Banking Act.

Division 3 — Appointment of administrators by the Court

530. What is an administration order?

An administration order is an order appointing a person as the administrator of a company and providing for the administration of the company by that person.

531. Conditions for making administration orders

The Court may make an administration order in relation to a company only if satisfied—

(a) that the company is or is likely to become unable to pay its debts; and

(b) that the administration order is reasonably likely to achieve an objective of administration.

532. Who may make an application to the Court to for an administration order in respect of company

(1) An application to the Court for an administration order in respect of a company may be made only by the following persons:

(a) the company;

(b) the directors of the company;

(c) one or more creditors of the company;

(d) a combination of persons specified in paragraphs (a) to (c);

(e) any other person of a class prescribed by the insolvency regulations for the purposes of this section.

(2) As soon as is reasonably practicable after the making of an application for administration, the applicant shall notify—

(a) any person who is or may be entitled to appoint an administrator of the company under section 534; and

(b) such other persons (if any) as may be prescribed by the insolvency regulations for the purposes of this section.

(3) An application for administration may not be withdrawn without the approval of the Court.

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

533. Powers of the Court on hearing application for administration order

(1) On hearing an application for an administration order in respect of a company, the Court may—

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a liquidation application and make any order that the Court could make under section 426;

(f) make any other order that the Court considers appropriate.

(2) An appointment of an administrator by an administration order takes effect—

(a) at a time specified in the order; or

(b) if no time is specified, 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 or the company;

(b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency; or

(c) do either of those things.

Division 4 — Appointment of administrator by holder of floating charge

534. Holder of floating charge may appoint administrator

(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of subsection (1), a floating charge is a qualifying floating charge if it is created by a document that—

(a) states that this section applies to the floating charge; or

(b) purports to empower the holder of the floating charge to appoint an administrator of the company.

(3) For the purposes of subsection (1), a person is the holder of a qualifying floating charge in respect of a company's property if the person holds one or more debentures of the company secured—

(a) by a qualifying floating charge that relates to the whole or substantially the whole of the company's property;

(b) by a number of qualifying floating charges that together relate to the whole or substantially the whole of the company's property; or

(c) by charges and other forms of security that together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

535. Restrictions on the power of holder of floating charge to appoint administrator

(1) A person may not appoint an administrator under section 534 unless the person has given at least three days' notice to the holder of any prior floating charge that satisfies subsection (2) of that section.

(2) For the purposes of subsection (1), the priority of a floating charge shall be determined in accordance with the Movable Property Security Rights Act.

[Act No. 13 of 2017, Sch.]

536. Administrator not to be appointed if relevant floating charge is not enforceable

A person may not be appointed as administrator under section 534 if the floating charge on which the appointment depends is unenforceable.

537. Holder of relevant floating charge to notify the Court on appointing administrator

(1) A person who appoints an administrator of a company under section 534 shall lodge with the Court—

(a) a notice of appointment that complies with subsections (2); and

(b) such other documents as may be prescribed by the insolvency regulations for the purposes of this section.

(2) A notice of appointment complies with this subsection if—

(a) it includes a statutory declaration by or on behalf of the person who makes the appointment—

(i) that the person is the holder of a qualifying floating charge in respect of the company's property;

(ii) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment; and

(iii) that the appointment is in accordance with this Part; and

(b) it identifies the administrator and is accompanied by a statement by the administrator—

(i) that the administrator consents to the appointment;

(ii) that in the administrator's opinion the purpose of administration is reasonably likely to be achieved; and

(iii) giving such other information and opinions of a kind prescribed by the insolvency regulations for the purposes of this section.

(3) A statutory declaration under subsection (2) is not effective unless it is made during the period prescribed by the insolvency regulations for the purposes of this section.

538. When administrator's appointment takes effect

The appointment of an administrator under section 534 takes effect when the requirements of section 537 are satisfied.

539. Duty of holder of relevant floating charge to notify appointment to administrator and other persons

(1) As soon as is reasonably practicable after the requirements of section 537 are satisfied, the person who appointed the administrator under section 534 shall notify the administrator, and such other persons as may be prescribed by the insolvency regulations for the purposes of this section, that those requirements have been satisfied.

(2) A person who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

540. Power of the Court to order person invalidly appointed to be indemnified against liability

(1) If—

(a) a person purports to appoint an administrator under section 534; and

(b) the appointment is discovered to be invalid,

any person who appears to the Court to have a legitimate interest in the matter may apply to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may order the person who purported to make the appointment to indemnify the person appointed against liability that is solely attributable to the appointment's invalidity.

Division 5—Appointment of administrator by company or directors

541. Administrator may be appointed by company or by its directors

(1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

542. Restrictions on power of company or its directors to appoint administrator

If an administrator of a company—

(a) is appointed under section 541; or

(b) is appointed on an application for administration made by the company or its directors,

another person may not be appointed as an administrator of the company appointed under that section during the twelve months from and including the date the on which the appointment referred to in paragraph (a) or (b) ends.

543. Other restrictions on power of company or its directors to appoint administrator

(1) If a moratorium for a company under Division 2 of Part IX ends on a date when no voluntary arrangement is in force in respect of the company, this section applies for the twelve months from and including that date.

(2) This section also applies for the period of twelve months from and including date on which a voluntary arrangement in respect of a company ends if—

(a) the arrangement was made during a moratorium for the company under Part IX; and

(b) the arrangement ends prematurely.

(3) While this section applies, an administrator of the company may not be appointed under section 541.

544. Circumstances in which company or its directors may not appoint administrator

An administrator of a company may not be appointed under section 541 if—

(a) an application for the liquidation of the company has been presented and is not yet disposed of;

(b) an application for administration has been made and is not yet disposed of; or

(c) an administrative receiver of the company is in office.

545. Notice to be given of intention to appoint administrator

(1) A person who proposes to make an appointment under section 541 shall give to any person who is or may be entitled to appoint an administrator of the company under section 534 a notice that complies with subsection (3).

(2) A person who proposes to make an appointment under section 541 shall also give such a notice to such other persons as may be prescribed by the insolvency regulations for the purposes of this section.

(3) A notice complies with this subsection only if it—

(a) identifies the proposed administrator ;

(b) contains such other information (if any) as may be prescribed by the insolvency regulations for the purposes of this section; and

(c) is given at least seven days' before the appointment is to be made.

546. Person giving notice of intention to appoint administrator to lodge certain documents with the Court

(1) As soon as practicable after a person has given notice of an intention to make an appointment under section 545, the person shall lodge with the Court—

(a) a copy of the notice and of any document that accompanied it; and

(b) a statutory declaration by the person that complies with subsection (2).

(2) A statutory declaration complies with this subsection if—

(a) it declares—

(i) that the company is or is likely to become unable to pay its debts;

(ii) that the company is not in liquidation; and

(iii) that, so far as the declarant is able to ascertain, the appointment is not prevented by sections 542 to 544;

(b) contains such additional information (if any) as may be prescribed by the insolvency regulations for the purposes of this section; and

(c) is made within such period as is so prescribed.

547. Further restrictions on making appointments under section 541

(1) An appointment may not be made under section 541 unless the person who makes the appointment has complied with the requirements of section 545 and 546 and—

(a) the period of notice specified in section 545(1) has expired; or

(b) each person to whom notice has been given under section 545(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under section 541 after the period of fourteen days beginning with the date on which the notice of intention to appoint is lodged under section 546(1).

548. Person appointing administrator under section 541 to lodge certain documents with the Court

(1) A person who appoints an administrator of a company under section 541 shall lodge with the Court—

(a) a notice of appointment that identifies the administrator;

(b) a statement by the administrator that complies with subsection (2);

(c) a statutory declaration by the person making the appointment that complies with subsection (3); and

(d) such other documents (if any) as may be prescribed by the insolvency regulations for the purposes of this section.

(2) A statement complies with this subsection if it—

(a) states that the administrator consents to the appointment;

(b) states that ,in the administrator's opinion, the objective of the administration is reasonably likely to be achieved; and

(c) gives such other information and opinions (if any) as may be prescribed by the insolvency regulations for the purposes of this section.

(3) A statutory declaration complies with this subsection if it—

(a) declares—

(i) that the declarant is entitled to make an appointment under section 541;

(ii) that the appointment is in accordance with this Part; and

(iii) that, so far as the declarant is able to ascertain—the statements made and information given in the statutory declaration lodged with the notice of intention to appoint remain accurate; and

(b) is made within such period as is prescribed by the insolvency regulations for the purposes of this subsection.

(4) For the purpose of a statement under subsection (2), an administrator may rely on information supplied by directors of the company, unless the administrator has reason to doubt its accuracy.

(5) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

549 What happens if no one is entitled to notice of intention to appoint administrator

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If no person is entitled to notice of intention to appoint under section 545(1). so that section 547 does not apply, the statutory declaration accompanying the notice of appointment is ineffective unless it includes the statements and information required under section 546(2), in which case section 548(2)(c) does not apply.

550 When appointment of administrator under this Division takes effect

The appointment of an administrator under section 541 takes effect when the requirements of section 548 are satisfied.

551. Person making appointment to notify appointment to administrator and others

(1) As soon as is reasonably practicable after the requirements of section 548 are satisfied, the person who has appointed the administrator under section 541 shall notify the administrator, and such other persons as may be prescribed by the insolvency regulations for the purposes of this section, that those requirements have been satisfied.

(2) A person who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

552. Appointment under section 541 not to take effect in certain cases

If, before the requirements of section 548 are satisfied, the company enters administration under an administration order, or because of an appointment under section 534—

(a) the appointment under section 541 has no effect; and

(b) the requirement imposed by section 551 does not apply

553. Power of the Court to order person invalidly appointed to be indemnified against liability

(1) If—

(a) a person purports to appoint an administrator under section 541; and

(b) the appointment is discovered to be invalid,

any person who appears to the Court to have a legitimate interest in the matter may apply to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may order the person who purported to make the appointment to indemnify the person appointed against liability that is solely attributable to the appointment's invalidity.

Division 6 — Applications for administration—special cases

554. Power of the Court to make administration order in respect of company on application made by holder of qualifying floating charge even if company may be able to pay its debts

(1) If an application for administration in respect of a company—

(a) is made by the holder of a qualifying floating charge in respect of the company's property; and

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

the Court may make an administration order whether or not it is satisfied that the company is or is likely to become unable to pay its debts.

(2) However, the Court may make such an order only if it is satisfied that the applicant could properly appoint an administrator under section 534.

555. Holder of qualifying floating charge may intervene in application made by person who is not the holder of such a charge

If—

(a) an application for administration in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property; and

(b) the holder of a qualifying floating charge in respect of the company's property applies to the Court to have a specified person appointed as administrator and not the person specified by the administration applicant,

the Court shall grant the application unless the Court believes it should be refused because of the particular circumstances of the case.

556. Other circumstance in which holder of qualifying floating charge may make application for administration order

(1) If the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under section 534 but for section 528(1)(b), that holder may nevertheless make an application to the Court for an administration order under subsection (2).

(2) If the Court makes an administration order on hearing an application made under subsection (1), the Court—

(a) shall discharge the liquidation order;

(b) shall make provision for such matters as may be prescribed by the insolvency regulations for the purposes of this section;

(c) may make such other provision of a consequential nature as it considers appropriate; and

(d) shall specify which of the powers under this Part are to be exercisable by the administrator.

(3) If the Court specifies the powers under this Part that are to be exercisable by the administrator, this Part has, in relation to the exercise of those powers, effect with such modifications as the Court may specify.

557. Power of liquidator of company to make an application for its administration

(1) The liquidator of a company may make an application to the Court for an administration order under subsection (2).

(2) If the Court makes an administration order on the hearing of an application made under subsection (1), the Court—

(a) shall discharge any liquidation order existing in respect of the company;

(b) may make such other provision of a consequential nature as it considers appropriate; and

(c) shall specify which of the powers under this Part are to be exercisable by the administrator.

(3) If the Court specifies the powers under this Part that are to be exercisable by the administrator, this Part has, in relation to the exercise of those powers, effect with such modifications as the Court may specify.

Division 7 — Effect of administration orders

558. Administration order in respect of company prevents making of application for liquidation order and suspends pending applications for liquidation order

(1) On the making of an administration order in respect of a company—

(a) an application for the liquidation of the company may not be made; and

(b) any application for the liquidation of the company that is then pending is suspended while the company is under administration.

(2) Subsection (1)(a) does not prevent an application from being made for the liquidation of the company under section 425 or the Court from making a liquidation order in respect of such an application.

(3) If an administrator becomes aware that an application was made under section 425 before the administrator's appointment, the administrator shall apply to the Court for directions under section 580.

559. Moratorium on insolvency proceedings while administration order has effect

(1) While a company is under administration—

(a) a resolution for the liquidation of the company may not be made; and

(b) the Court may not make an order for the liquidation of the company.

(2) Subsection (1)(b) does not prevent an application from being made for the liquidation of the company under section 425 or the Court from making a liquidation order in respect of such an application.

(3) On becoming aware that an application for a liquidation order has been made under section 425, the administrator shall apply to the Court for directions under section 580.

560. Moratorium on other legal process while administration order has effect

(1) While a company is under administration—

(a) a person may take steps to enforce a security over the company's property only with the consent of the administrator or with the approval of the Court;

(b) a person may take steps to repossess goods in the company's possession under a credit purchase transaction only with the consent of the administrator or with the approval of the Court;

if the Court gives approval—subject to such conditions as the Court may impose;

(c) a landlord may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company only with the consent of the administrator or with the approval of the Court; and

(d) a person may begin or continue legal proceedings (including execution and distress) against the company or the company's

property only with the consent of the administrator or with the approval of the Court.

(2) In giving approval for a transaction under subsection (1), the Court may impose a condition on, or a requirement in connection with, the transaction.

560A. Considerations for approval to lift moratorium

When considering whether to grant approval under section 560, the court may in particular take into consideration—

(a) the statutory purpose of the administration;

(b) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;

(c) the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant; and

(d) the conduct of the parties.

[Act No. 12 of 2019, Sch.]

561. Interim moratorium when application for administration order has been made

(1) This section applies if an application for administration in respect of a company has been made and—

(a) the application has not yet been granted or dismissed; or

(b) the application has been granted but the administration order has not yet taken effect.

(2) This section also applies from the time when a copy of notice of intention to appoint an administrator under section 523 is lodged with the Court until—

(a) the appointment of the administrator takes effect; or

(b) seven days from and including the date of lodgement without an administrator having been appointed.

(3) This section applies from the time when a copy of notice of intention to appoint an administrator is lodged with the Court under section 546(1) until—

(a) the appointment of the administrator takes effect; or

(b) the period specified in section 547(2) expires without an administrator having been appointed.

(4) When this section applies, the following provisions have effect:

(a) a resolution may not be passed for the liquidation of the company;

(b) the Court may not make an order for the liquidation of the company;

(c) a person may take steps to to enforce security over the company's property only with the approval of the Court;

(d) a person may take steps to repossess goods in the company's possession under a hire purchase agreement only with the approval of the Court.

(e) a landlord may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company only with the approval of the Court;

(f) a person may begin or continue legal process (including legal proceedings, execution, distress and diligence) against the company or property of the company only with the approval of the Court;

(g) a person may take steps to enforce security over the company's property only with the approval of the Court;

(h) a person may take steps to repossess goods in the company's possession under a hire purchase agreement only with the approval of the Court.

(5) In giving approval for a transaction under subsection (4), the Court may impose a condition on, or a requirement in connection with, the transaction.

(6) Subsection (4)(b) does not prevent an application from being made for the liquidation of the company under section 425 or the Court from making a liquidation order in respect of such an application.

562. Company's business documents to state that company's affairs are under administration

(1) While a company is under administration, the administrator shall ensure that all business documents issued by or on behalf of the company or the administrator, and all the company's websites, state—

(a) the name of the administrator; and

(b) that the affairs and property of the company are being managed by the administrator.

(2) An administrator who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, while under administration, a company sends or publishes a business document that does not state—

(a) the name of the administrator; and

(b) that the affairs and property of the company are being managed by the administrator,

the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) In this section, "business document" means—

(a) an invoice;

(b) an order for goods or services;

(c) a business letter; or

(d) an order form,

whether in hard copy, electronic or any other form.

Division 8 — Process of administration

563. Announcement of administrator's appointment

(1) As soon as practicable after becoming administrator of a company, the administrator shall comply with subsection (2) and (3).

(2) The administrator shall—

(a) send a notice of the administrator's appointment to the company; and

(b) publish a notice of the administrator's appointment in such publications and in such locations as are prescribed by the insolvency regulations for the purposes of this section.

(3) The administrator shall also—

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

(b) send a notice of the administrator's appointment to each creditor of whose claim and address the administrator is aware.

(4) Within seven days from and including the prescribed date, the administrator shall lodge with the Registrar for registration a notice of the administrator's appointment.

(5) Within fourteen days from and including the prescribed date, the administrator shall also send a notice of the administrator's appointment to such classes of persons as may be prescribed by the insolvency regulations for the purposes of this section.

(6) The prescribed date for the purpose of subsections (4) and (5) is—

(a) in the case of an administrator appointed by administration order—the date of the order;

(b) in the case of an administrator appointed under section 534—the date on which the administrator receives notice under section 539; and

(c) in the case of an administrator appointed under section 541—the date on which the administrator receives notice under section 551.

(7) On the application of the administrator, the Court may order that subsection (3)(b) or (5)—

(a) is not to apply; or

(b) is to apply with the substitution of a different period.

(8) An administrator who fails without reasonable excuse to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(9) If, after being convicted of an offence under subsection (8), an administrator continues to fail to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

564. Relevant persons to provide administrator with statement of company's affairs

(1) As soon as practicable after becoming administrator of a company, the administrator shall give notice requiring one or more relevant persons to provide the administrator with a statement of the company's affairs that complies with subsection (2).

(2) A statement complies with this subsection if it—

(a) is verified by a statutory declaration;

(b) gives the particulars of the company's property, debts and liabilities prescribed by the insolvency regulations for the purposes of this section;

(c) gives the names and addresses of the company's creditors;

(d) specifies the security (if any) held by each creditor;

(e) gives the date on which each such security was given; and

(f) contains such other information (if any) as may be so prescribed.

(3) In subsection (1) "relevant person" means any of the following:

(a) a person who is an officer of the company;

(b) a person who took part in the formation of the company during the period of twelve months ending with the date on which the company enters administration;

(c) a person employed by the company during that period;

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

(4) For the purpose of subsection (3), a reference to being employed includes being employed through a contract for the supply of services.

565. Deadline for submitting statement of affairs

(1) The deadline for submitting a statement of financial position is the end of twelve days from and including the day on which the relevant person receives notice of the requirement.

(2) The administrator may—

(a) revoke a requirement under section 564(1); or

(b) extend the deadline specified in subsection (1) (whether before or after expiry).

(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).

(4) A person who, without reasonable excuse, fails to comply with a requirement under section 564(1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(5) If, after being convicted of an offence under subsection (4), a person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

566. Administrator to make statement setting out administrator's proposals for achieving the purpose of the administration

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

(2) The administrator shall ensure that the proposals—

(a) deal with such matters as may be prescribed by the insolvency regulations for the purposes of this section; and

(b) if applicable, explain why the administrator believes that the objective specified in section 522(1)(a) or (b) cannot be achieved.

(3) Proposals under this section may include—

(a) a proposal for a voluntary arrangement under Part IX; or

(b) a proposal for a compromise or arrangement to be sanctioned under the Companies Act, 2015.

(4) The administrator—

(a) shall send a copy of the statement of the administrator's proposals—

(i) to every creditor of the company of whose claim and address the administrator is aware; and

(ii) to every member of the company of whose address the administrator is aware; and

(b) shall lodge a copy of the statement with the Registrar for registration.

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

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

(b) in any case, not later than sixty days after the date on which the company enters administration.

(6) Subsection (4)(a)(ii) is complied with if the administrator publishes in accordance with the insolvency regulations 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.

(7) An administrator who fails, without reasonable excuse, to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) If, after being convicted of an offence under subsection (7), an administrator continues to fail to comply with the relevant requirement of this section, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) A period specified in this section can be varied in accordance with section 622.

567. Conduct of creditors' meetings

The person presiding at a creditors' meeting shall ensure that it is conducted in the manner prescribed by the insolvency regulations.

568. Requirement to convene initial creditors' meeting

(1) The administrator shall ensure that each copy of the administrator's statement of proposals sent to a creditor in accordance with section 566(4)(b) is accompanied by an invitation to an initial creditors' meeting to be held—

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

(b) in any case, within seventy days from and including the date on which the company enters administration.

(2) The administrator shall present a copy of the administrator's statement of proposals to the initial creditors' meeting.

(3) The period specified in subsection (1)(b) can be varied in accordance with section 622.

569. When administrator is not required to convene meeting

(1) Section 568(1) does not apply if the statement of proposals states that the administrator believes—

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

(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors otherwise than in accordance with section 474(2)(a); or

(c) that neither of the objectives specified in section 522(1)(a) and (b) can be achieved.

(2) However, the administrator shall convene an initial creditors' meeting if requested to do so—

(a) by creditors of the company holding debts amounting to at least ten percent of the total debts of the company; and

(b) in the manner, and within the period, prescribed by the insolvency regulations for the purposes of this section.

(3) The administrator shall convene a meeting requested under subsection (2) for a date within the period prescribed for the purpose of subsection (2)(b).

(4) The period so prescribed can be varied in accordance with section 622.

(5) An administrator who fails, without reasonable excuse, to comply with subsection (3) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), an administrator continues to fail to convene a creditors' meeting as required by subsection (3), the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

570. Business to be conducted at initial creditors' meeting and obligation of administrator to report outcome to the Court and others

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

(a) approve them without modification; or

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

(2) As soon as practicable after the initial creditors' meeting has ended, the administrator—

(a) shall report any decision at the meeting taken—

(i) to the Court; and

(ii) to such other persons as may be prescribed by the insolvency regulations for the purposes of this section; and

(b) shall lodge a copy of the report with the Registrar for registration.

(3) An administrator who, without reasonable excuse, fails to comply with subsection (2)(a) or (b) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(4) If, after being convicted of an offence under subsection (3), an administrator continues to fail to comply with the relevant requirement of that subsection, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

571. Administrator's proposals can be revised

(1) This section applies if—

(a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting;

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

(c) the administrator believes that the proposed revision is substantial.

(2) When this section applies, the administrator shall—

(a) convene a creditors' meeting;

(b) send a statement of the proposed revision with the notice of the meeting sent to each creditor;

(c) send a copy of the statement, within the period prescribed by the insolvency regulations for the purposes of this paragraph, to each member of the company of whose address the administrator is aware; and

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

(3) An administrator complies with subsection (2)(c) by publishing a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to the administrator at an address specified in the notice.

(4) The administrator shall publish the notice in such publications and within such period as may be prescribed by the insolvency regulations for the purposes of this subsection.

(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 modifications to which the administrator consents.

(6) As soon as practicable after the conclusion of a creditors' meeting, the administrator—

(a) shall report every decision taken at the meeting—

(i) to the Court; and

(ii) to such other persons as may be prescribed by the insolvency regulations for the purposes of this section; and

(b) shall lodge a copy of the report with the Registrar for registration.

(7) An administrator who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) If, after being convicted of an offence under subsection (7), an administrator continues to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

572. Consequences of failure to obtain approval of administrator's proposals

(1) This section applies if 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 proposals presented to it.

(2) The Court may—

(a) make an order terminating the appointment of an administrator with immediate effect or with effect from a specified date;

(b) adjourn the hearing conditionally or unconditionally;

(c) make an interim order;

(d) make an order declaring an application for a liquidation order to be suspended because of section 558 (1) (b); or

(e) make any other order (including an order making consequential provision) that the Court considers appropriate.

573. Power of administrator to convene further creditors' meetings

(1) The administrator of a company shall convene a creditors' meeting if—

(a) in the manner prescribed by the insolvency regulations, it is requested by creditors of the company holding debts amounting to at least ten percent of the total debts of the company; or

(b) the administrator is directed by the Court to convene a creditors' meeting.

(2) An administrator who, without reasonable excuse, fails to convene a creditors' meeting as required by this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), an administrator continues to fail to comply with the relevant request, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(4) The fact that an administrator may be prosecuted for, and convicted of an offence, under this section does not preclude the Court from finding the administrator guilty of contempt of the Court for failing to comply with a direction of the Court.

574. Creditors' meeting may establish creditors' committee

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

(2) A creditors' committee shall perform the functions conferred on it by or under this Act.

(3) A creditors' committee may require the administrator—

(a) to appear before the committee at any reasonable time of which the administrator is given at least seven days' notice; and

(b) to provide the committee with such information about the performance of the administrator's functions as the committee reasonably requires.

575. Creditors' meeting can be conducted by correspondence

(1) Any matter or decision that is required or permitted by or under this Part to be dealt with or made at a creditors' meeting may be dealt with or made by correspondence between the administrator and creditors—

(a) as provided by the insolvency regulations; and

(b) subject to any condition specified in those regulations for the purposes of this section.

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

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

Division 9 — Functions and powers of administrator

576. Specific functions of administrator

The administrator of a company has the functions and powers specified in the Fourth Schedule.

577. Power of administrator to remove and appoint directors of company

The administrator of a company—

(a) may remove a director of the company from office; and

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

578. Power of administrator to convene meetings of members and creditors of company

The administrator of a company may convene a meeting of members or creditors of the company.

579. Power of administrator to seek directions from the Court

(1) On the application of the administrator of a company, the Court may give directions with respect to the performance and exercise of the administrator's functions and powers and the conduct of the administration generally.

(2) An administrator shall comply with any directions given to the administrator under subsection (1).

580. General powers of administrator

(1) The administrator of a company may take any action that contributes to, or is likely to contribute to, the effective and efficient management of the affairs and property of the company.

(2) A provision of this Part that expressly permits the administrator to do or not to do a specified act does not limit the effect of subsection (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within the administrator's powers.

581. Company under administration not to perform management functions without administrator's consent

(1) A company under administration, or an officer of a company under administration, shall not perform or exercise a management function without the consent of the administrator.

(2) For the purpose of subsection (1)—

(a) "management function" means a function or power that could be performed or exercised so as to interfere with the exercise of the administrator's functions; and

(b) consent may be general or specific.

(3) A company that contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(4) An officer of a company who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

582. Power of administrator to distribute company's assets to creditors

(1) The administrator of a company may make a distribution to creditors of the company.

(2) Section 471 and the Second Schedule apply in relation to a distribution under this section as they apply in relation to the liquidation of a company.

(3) In the case of a creditor of the company who is neither a secured nor a preferential creditor, a payment may be made to the creditor as part of a distribution under this section only with the approval of the Court.

(4) An administrator who makes a payment in contravention of subsection (3) is guilty of contempt of the Court and is liable to be punished accordingly (in addition to any other punishment to which the administrator may be subject).

583. Power of administrators to make special payments in certain cases

The administrator of a company may make a payment otherwise than in accordance with section 582 or paragraph 13 of the Fourth Schedule if the administrator believes it likely to assist achievement of the purpose of administration.

584. Duty of administrator to assume control of property of company

Immediately on being appointed as administrator of a company, the administrator shall assume control of all the property to which the administrator believes the company is entitled.

585. Duty of administrator to manage affairs and property of company

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

(a) any proposals approved under section 570;

(b) any revision of those proposals that is made by the administrator and that the administrator does not consider substantial; and

(c) any revision of those proposals approved under section 571.

(2) If the Court gives directions to the administrator of a company in connection with any aspect of the administrator's management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The Court may give directions under subsection (2) only if—

(a) no proposals have been approved under section 570;

(b) the directions are consistent with any proposals under section 570 or revision approved under section 571;

(c) the Court believes that the directions are required in order to reflect a change in circumstances since the approval of proposals under section 570 or a revision under section 571; or

(d) the Court believes the directions are desirable because of a misunderstanding about proposals approved under section 570 or a revision approved under section 571.

586. Administrator is agent of company

In performing and exercising the administrator's functions and powers under this Part, the administrator of a company acts as its agent.

587. Power of administrator to dispose of, and deal with, charged property: floating charge

(1) The administrator of a company may dispose of, or take action relating to, property that is subject to a floating charge as if it were not subject to the charge.

(2) If property is disposed of in reliance on subsection (1), the holder of the floating charge has the same priority in respect of acquired property as that holder had in respect of the property disposed of.

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

588. Power of administrator to dispose of, and deal with, charged property: non-floating charge

(1) On the application of the administrator of a company, the Court may make an order enabling the administrator to dispose of property that is subject to a security as if it were not subject to the security.

(2) An order under subsection (1) may be made if the Court believes that disposal of the property would be likely to promote the purpose of the administration of the company.

(3) An order under this section is subject to the condition that—

(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 that would be realised on a sale of the property at market value,

will be applied towards discharging the amounts secured by the security.

(4) If an order under this section relates to more than one security, the administrator shall apply the net proceeds of disposal in the order of the priorities of the securities.

(5) Within fourteen days after the date on which an order is made under this section, the administrator shall lodge a copy of the order with the Registrar for registration.

(6) An administrator who, without reasonable excuse, fails to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding two hundred shillings.

(7) If, after being convicted of an offence under subsection (6), the administrator continues to fail to lodge the required order with the Registrar, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

589. Power of administrator to dispose of goods that are subject to credit purchase transaction

(1) The Court may make an order authorising the administrator of a company to dispose of goods that are in the possession of the company under a credit purchase transaction as if all the rights of the owner under the agreement were vested in the company.

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

(a) only on the application of the administrator; and

(b) only if the Court believes that disposal of the goods would be likely to promote the purpose of administration of the company.

(3) An order under subsection (1) is subject to the condition that—

(a) the net proceeds of disposal of the goods; 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 that would be realised on a sale of the goods at market value,

will be applied towards discharging the amounts payable under the credit purchase transaction.

(4) Within fourteen days from and including the date of the order, an administrator who makes a successful application for an order under this section shall lodge a copy of the order with the Registrar for registration.

(5) An administrator who, without reasonable excuse, fails to comply with subsection (4) and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), an administrator continues to fail to lodge the required copy, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

590. Protection for secured and preferential creditors

(1) An administrator's statement of proposals under section 566 may not include action that—

(a) affects the right of a secured creditor of the company to enforce the creditor's security;

(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 that creditor's debt than another.

(2) Subsection (1) does not apply to—

(a) action to which the relevant creditor consents;

(b) a proposal for a voluntary arrangement under Part IX;

(c) a proposal for a compromise or arrangement to be sanctioned under the Companies Act, 2015; or

(d) a proposal for a cross-border merger.

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

591. Administrator's conduct of administration can be challenged

(1) A creditor or member of a company under administration may apply to the Court claiming—

(a) that the administrator is acting or has acted so as to detrimentally affect the interests of the applicant (whether alone or in common with some or all other members or creditors of the company); or

(b) that the administrator proposes to act in a way that would detrimentally affect 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 under administration may apply to the Court on the ground that the administrator is not performing the administrator's functions as quickly or as efficiently as is reasonably practicable.

(3) On the hearing of an application made under subsection (1) or (2), the Court may—

(a) make an order granting relief;

(b) make an order dismissing the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order; or

(e) make such other order as it considers appropriate.

(4) In particular, an order under this section may do all or any of the following:

(a) regulate the administrator's performance or exercise of the administrator's functions or powers;

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

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

(d) end the appointment of an administrator;

(e) make provisions of a consequential nature.

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

(a) is within the administrator's powers under this Part; or

(b) was taken in reliance on an order under section 588 or 589.

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

(a) a voluntary arrangement approved under Part IX;

(b) a compromise or arrangement sanctioned under the Companies Act, 2015;

(c) a merger of a kind prescribed by the insolvency regulations made for the purposes of this section; or

(d) proposals or a revision approved under section 570 or 571 more than thirty days before the day on which the application for the order under this section is made.

592. Power of the Court to examine conduct of administrator's administration of the company

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

(a) is or purports to be the administrator of a company; or

(b) has been, or has purported to be, the administrator of a company.

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

(a) the Official Receiver;

(b) the administrator of the company;

(c) the liquidator (if any) of the company;

(d) a creditor of the company; or

(e) a contributory of the company.

(3) An application under subsection (2) may be made only if it alleges that the administrator or person purporting to be 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 the conduct of an administrator or a person purporting to act as such, the Court may order the administrator or person to do all or any of the following:

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

(b) to pay interest;

(c) to contribute an amount to the company's property as compensation for breach of duty or misfeasance.

(5) An application under subsection (2) may be made in respect of an administrator who has been discharged under section 614 only with the approval of the Court.

593. Automatic end of administration

The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.

594. Circumstances in which administrator's term of office can be extended

(1) Despite section 593—

(a) on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and

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

(2) An order of the Court made under subsection (1)(a)—

(a) may be made in respect of an administrator whose term of office has already been extended; but

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

(3) As soon as practicable after an order is made under (1)(a), the administrator shall lodge a copy of the order with the Registrar for registration.

(4) In subsection (1)(b), "consent" means—

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

(b) if the company has unsecured debts—the consents of creditors of the company holding debts amounting to more than fifty percent of the company's unsecured debts (disregarding debts held by any creditor who does not respond to an invitation to give or withhold consent).

(5) However, if the administrator has made a statement under section 569(1)(b), "consent" means—

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

(b) if the administrator believes that a distribution may be made to preferential creditors —

(i) the consent of each secured creditor of the company; and

(ii) the consents of preferential creditors of the company holding debts amounting to more than fifty percent of the preferential debts of the company (disregarding debts held by any creditor who does not respond to an invitation to give or withhold consent).

(6) Consent for the purposes of subsection (1)(b) may be—

(a) written; or

(b) signified orally at a creditors' meeting.

(7) An administrator's term of office—

(a) may be extended by consent only once;

(b) may not be extended by consent after it has been extended by an order of the Court; and

(c) may not be extended by consent after it has ended.

(8) As soon as practicable after an administrator's term of office is extended by consent, the administrator shall—

(a) lodge a notice of the extension with the Court; and

(b) lodge a copy of the notice with the Registrar for registration.

(9) An administrator who, without reasonable excuse, fails to comply with subsection (3) or (8) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings for each such offence.

(10) If, after being convicted of an offence under subsection (9), an administrator continues to fail to lodge the required copy, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

595. Court may terminate administration on application of administrator

(1) The administrator of a company shall make an application to the Court for an order terminating the administrator's appointment—

(a) on forming the belief that—

(i) the objective of the administration cannot be achieved in relation to the company; or

(ii) the company should not have entered administration; or

(b) if a creditors' meeting requires the administrator to make such an application.

(2) An administrator shall also make such an application if—

(a) the administration results from an administration order; and

(b) the administrator believes that the purpose of administration has been sufficiently achieved in relation to the company.

(3) On the hearing of an application made under this section, the Court may make—

(a) an order terminating the administrator's appointment with immediate effect or from a specified later date;

(b) an order dismissing the application; or

(c) an interim order.

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

(a) an order adjourning the hearing conditionally or unconditionally; and

(b) such ancillary or supplementary order as it considers appropriate.

596. Termination of administration when objective achieved

(1) This section applies to an administrator of a company who is appointed under section 534 or 541.

(2) If the administrator believes that the purpose of administration has been sufficiently achieved in relation to the company, the administrator may lodge—

(a) with the Court; and

(b) with the Registrar,

a notice containing the information prescribed by the insolvency regulations for the purposes of this section.

(3) The administrator's appointment ends when the requirements of subsection (2) are satisfied.

(4) Within seven days after lodging a notice with the Court under subsection (2), the administrator shall send a copy of it to every creditor of the company of whose claim and address the administrator is aware.

(5) The insolvency regulations may provide that the administrator is taken to have complied with subsection (4) if, before the end of the period specified in that subsection, the administrator publishes in such publications, and in such locations, as may be specified in those regulations a notice undertaking to provide a copy of the notice under subsection (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who, without reasonable excuse, fails to comply with subsection (4) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(7) If, after being convicted of an offence under subsection (6), an administrator continues to fail to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

597. Court may terminate administrator's appointment on application of creditor

(1) A creditor of a company that is under administration may make an application to the Court for an order terminating the appointment of an administrator of the company.

(2) An application under subsection (1) may be made only if it alleges an improper motive—

(a) in the case of an administrator appointed by the Court—on the part of the applicant for the order; or

(b) in any other case—on the part of the person who appointed the administrator.

(3) On the hearing of an application made under subsection (1), the Court may make—

(a) an order terminating the administrator's appointment with immediate effect or from a specified later date;

(b) an order dismissing the application; or

(c) an interim order.

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

(a) an order adjourning the hearing conditionally or unconditionally; and

(b) such ancillary orders as it considers appropriate.

598. Court to terminate administrator's appointment on making of public interest liquidation order

(1) If a liquidation order is made for the liquidation of a company under administration on an application made under section 425, the Court shall make an order—

(a) terminating the appointment of the administrator; or

(b) directing the appointment of the administrator to continue to have effect.

(2) If the Court makes an order under subsection (1)(b), it may also—

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

(b) order that this Part has effect in relation to the administrator with specified modifications.

599. Procedure for moving from administration to creditors' voluntary liquidation

(1) This section applies if the administrator of a company believes—

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

(b) if there are any unsecured creditors—that a distribution will be made to them.

(2) The administrator may lodge with the Registrar for registration a notice that this section applies.

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

(4) As soon as practicable lodging a notice under subsection (2), the administrator shall—

(a) lodge a copy of the notice with the Court; and

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

(5) On the registration of a notice in accordance with subsection (3)—

(a) the administrator's appointment in respect of the company ends; and

(b) the company is required to be liquidated as if a resolution for voluntary liquidation under section 393 were passed on the day on which the notice is registered.

(6) The liquidator for the purposes of the liquidation is—

(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 VI to a liquidation in accordance with this section—

(a) section 393 does not apply;

(b) section 394 applies as if the reference to the time of the passing of the resolution for voluntary liquidation were a reference to the beginning of the date of registration of the notice under subsection (2);

(c) section 397 does not apply;

(d) sections 405, 406 and 407 do not apply;

(e) section 430 applies as if the reference to the time of the passing of the resolution for voluntary liquidation were a reference to the beginning of the date of registration of the notice under subsection (2); and

(f) any creditors' committee that is in existence immediately before the company ceased to be under administration continues in existence after that time as if appointed as a liquidation committee under section 409.

600. Moving from administration to dissolution

(1) On forming the belief that a company that is under administration has no property that might allow a distribution to its creditors, the administrator shall lodge with the Registrar a notice to that effect.

(2) On the application of the administrator of a company, the Court may disapply subsection (1) in respect of the company.

(3) On receiving of a notice lodged under subsection (1), the Registrar shall register it.

(4) The appointment of the administrator ends when the notice is registered.

(5) As soon as practicable after lodging a notice under subsection (1), the administrator shall—

(a) lodge a copy of the notice with the Court; and

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

(6) At the end of three months from and including the date of registration of a notice in respect of a company under subsection (1) the company is dissolved.

(7) On an application in respect of a company made by the administrator or some other person who has a legitimate interest in the matter, the Court may—

(a) extend the period specified in subsection (6);

(b) suspend that period; or

(c) disapply subsection (6).

(8) As soon as practicable after an order is made under subsection (7), the administrator shall lodge a copy of the order with the Registrar for registration.

(9) On receiving of a notice lodged under subsection (8), the Registrar shall register it.

(10) An administrator who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(11) If, after being convicted of an offence under subsection (10), an administrator continues to fail to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

601. Discharge of administration order if administrator's appointment is terminated

The Court shall discharge an administration order if—

(a) it has made an order under this Part terminating an administrator's appointment; and

(b) the administrator was appointed by the Court.

602. Administrator to lodge copy of order of the Court terminating appointment with Registrar of Companies

(1) Within fourteen days after the Court has made an order under this Part terminating the appointment of an administrator, the administrator shall lodge a copy of the order with the Registrar for registration.

(2) On receiving the copy lodged under subsection (1), the Registrar shall register it.

(3) An administrator who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(4) If, after being convicted of an offence under subsection (3), an administrator continues to fail to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 10 —Termination of appointment and replacement of administrators

603. Resignation of administrator

(1) An administrator may resign only in the circumstances prescribed by the insolvency regulations for the purposes of this section.

(2) If a circumstance has arisen that permits an administrator to resign, the administrator may do so only—

(a) in the case of an administrator appointed by the Court—by notice given to the Court;

(b) in the case of an administrator appointed under section 534—by notice given to the holder of the floating charge under which the appointment was made;

(c) in the case of an administrator appointed under section 541(1)—by notice given to the company; or

(d) in the case of an administrator appointed under section 541(2)—by notice given to the directors of the company.

604. Court may remove administrator from office

The Court may, by order, remove an administrator from office if satisfied that circumstances exist that make it inappropriate for the administrator to continue in office.

605. Administrator to vacate office on ceasing to be qualified

(1) An administrator of a company vacates office if the administrator ceases to be an authorised insolvency practitioner.

(2) If an administrator vacates office because of subsection (1), the administrator shall give notice of that fact—

(a) in the case of an administrator appointed by administration order—to the Court;

(b) in the case of an administrator appointed under section 534—by notice given to the holder of the floating charge under which the appointment was made;

(c) in the case of an administrator appointed under section 541(1)—by notice given to the company; or

(d) in the case of an administrator appointed under section 541(2)—by notice given to the directors of the company.

(3) An administrator who, without reasonable excuse, fails to comply with subsection (2) commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(4) If, after being convicted of an offence under subsection (3), an administrator continues to fail to comply with the relevant requirement, the administrator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

606. Filling vacancy in office of administrator

Sections 607 to 611 apply to an administrator who—

(a) dies;

(b) resigns;

(c) is removed from office under section 604; or

(d) vacates office under section 605.

607. Power of the Court to replace administrator

(1) Any of the following may make an application under subsection (2) for the replacement of an administrator appointed by the Court:

(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) if more than one person was appointed to act jointly or concurrently as the administrator—any of the persons who remain in office.

(2) An application may be made by a person or persons referred to subsection (1)(b), (c) or (d) only if—

(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 any other reason it is right for the application to be made.

(3) On the hearing of an application made under subsection (1), the Court shall make an order replacing the administrator if satisfied the administrator has died, is for any other reason not able to act as such or is not performing his or her duties in a competent manner.

608. Power of holder of floating charge to appoint replacement administrator appointed under section 534

If the administrator was appointed under section 534, the holder of the floating charge under which the appointment was made may replace the administrator.

609. Power of company to appoint replacement administrator appointed under section 541(1)

(1) If the administrator of a company was appointed under section 541(1), the company may replace the administrator.

(2) A replacement under this section may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property; or

(b) if consent is withheld—with the approval of the Court.

610. Power of directors of company to appoint replacement administrator appointed under section 541(2)

(1) If the administrator of a company was appointed under section 541(2), the directors of the company may replace the administrator.

(2) A replacement under this section may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property; or

(b) if consent is withheld—with the approval of the Court.

611. Power of the Court to replace administrator in certain other circumstances

(1) The Court may make an order replacing an administrator on the application of a person by whom an application is made under section 607(1) if the Court—

(a) is satisfied that a relevant person is not taking reasonable steps to make a replacement; or

(b) that for another reason it is right for the Court to make the replacement.

(2) In subsection (1), a relevant person is a person who is entitled to replace the administrator under any of sections 608 to 610.

612. Court may replace administrator when there is a competing floating charge-holder

(1) If an administrator of a company is appointed under section 534 by the holder of a qualifying floating charge in respect of the company's property, the holder of a prior qualifying floating charge in respect of the company's property may apply to the Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

(2) On the hearing of an application made under subsection (1), the Court may make an order replacing the existing administrator with the person nominated by the applicant, but only if satisfied that to do so would result in the company being administered more effectively and efficiently.

(3) An application made under subsection (1)may not be heard unless the existing administrator and the holder of the qualifying floating charge who appointed that administrator have been served with a copy of the application and have been given an opportunity to appear at the hearing as parties.

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(4) The Movable Property Security Rights Act determines whether one floating charge is prior to another for the purposes of this section.

[Act No. 13 of 2017, Sch.]

613. Creditors' meeting may replace administrator appointed by company or directors

(1) A creditors' meeting may replace an administrator of a company if—

(a) the administrator has been appointed by the company or its directors under section 541; and

(b) there is no holder of a qualifying floating charge in respect of the company's property.

(2) A creditors' meeting may act under subsection (1) only if the replacement administrator's written consent to act is presented to the meeting before the replacement is made.

614. Discharge from liability on administrator's vacating office

(1) If the appointment of a person as the administrator of a company ends (for whatever reason), the administrator is discharged from liability in respect of all acts done or omitted to be done as administrator.

(2) The discharge provided by subsection (1) takes effect—

(a) in the case of an administrator who dies—on the lodging with the Court of notice of the administrator's death;

(b) in the case of an administrator appointed under section 534 or 541—at a time fixed by resolution of the creditors' committee or, if there is no creditors' committee, by resolution of the creditors; or

(c) in any other case—at a time specified by the Court.

(3) For the purpose of the application of subsection (2)(b), if the administrator has made a statement that the company has insufficient property to enable a distribution to be made to unsecured creditors otherwise than in accordance with section 474(2)(a), a resolution is taken to have been passed if (and only if) passed with the approval of—

(a) each secured creditor of the company; or

(b) if the administrator has made a distribution to preferential creditors or believes that a distribution may be made to preferential creditors—

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than fifty percent 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) A discharge—

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

(b) does not prevent the exercise of the Court's powers under section 592.

615. Former administrator's remuneration and expenses payable of company's property and to have priority over holders of floating charges

(1) This section applies if a person's appointment as the administrator of a company has ended for whatever reason.

(2) In this section—

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

(b) "termination" means the time when the person's appointment as the company's administrator ended.

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

(a) a charge on and payable out of property over which the person had control immediately before the termination; and

(b) payable in priority to any security to which section 587 applies.

(4) An amount payable in respect of a debt or liability arising out of a contract, including a contract of a loan or other credit or finance facility for the benefit of the company and necessary for the continuation of any business of the company entered into by the former administrator or a predecessor before the termination is—

(a) a charge on and payable out of property over which the former administrator had control immediately before the termination; and

(b) payable in priority to any charge arising under subsection (3).

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

(a) action taken within fourteen days after an administrator's appointment is not to be treated as action adopting or contributing to adopting the contract;

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

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

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

(a) amounts payable in respect of periods of holiday (for which purpose the amounts are to be treated as relating to the period by reference to which the entitlement to holiday accrued);

(b) amounts payable in respect of periods of absence through illness or other good cause;

(c) amounts payable instead of a period of holidays;

(d) in relation to a particular period—amounts that would be treated as earnings by any enactment prescribed by the insolvency regulations for the purposes of this section; and

(e) contributions to occupational pension schemes.

[Act No. 12 of 2019, Sch.]

Division 11 — Supplementary provisions

616. Joint and concurrent administrators

(1) In this Part—

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

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

(2) A person who appoints more than one person as an administrator of a company shall specify—

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

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

617. Offences committed by joint administrators

(1) If two or more persons are appointed to act as joint administrators of a company, a reference to the administrator of the company in this Part is to those persons acting jointly.

(2) However, a reference to the administrator of a company in Division 10 is to all or any of the persons appointed to act jointly.

(3) If—

(a) a provision of this Part requiring an administrator of a company to comply with a specified requirement constitutes an offence;

(b) the requirement is not complied with in relation to a particular company; and

(c) two or more administrators are appointed to act jointly in respect of the company,

each of the persons commits the offence and may be proceeded against and punished individually.

(5) The reference in section 562(1) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) If persons are appointed to act jointly to perform or exercise only some of the functions or powers of the administrator of a company, this section applies only in relation to the functions or powers in respect of which those persons are appointed.

618. Administrators acting concurrently

If two or more persons are appointed to act concurrently as the administrator of a company, a reference to the administrator of a company in this Part is to any of the persons appointed or to any combination of them.

619. Power to appoint administrators to act concurrently

(1) If a company is under administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) If a company entered administration by administration order, an appointment under subsection (1) may be made only by the Court on the application of—

(a) a person or group listed in section 532(1)(a) to (e); or

(b) the administrator of the company.

(3) If a company entered administration because of an appointment under section 534, an appointment under subsection (1) may be made only by—

(a) the holder of the floating charge under which the appointment was made; or

(b) the Court on the application of the administrator of the company.

(4) If a company entered administration because of an appointment under section 541(1), an appointment under subsection (1) may be made only—

(a) by the Court on the application of the administrator of the company; or

(b) by the company with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, if consent is withheld, with the approval of the Court.

(5) If a company entered administration because of an appointment under section 541(2), an appointment under subsection (1) may be made only—

(a) by the Court on the application of the administrator of the company; or

(b) by the directors of the company with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, if consent is withheld, with the approval of the Court.

(6) An appointment under subsection (1) may be made only with the consent of the administrator of the company.

620. Presumption of validity of acts of administrator

An act of the administrator of a company is valid even if the administrator's appointment or qualification is subsequently found to be defective.

621. Majority decision of directors

A reference in this Part to act done or omitted to be done by the directors of a company includes the same act done or omitted to be done by a majority of the directors of a company.

622. Power to extend time limits

(1) If a provision of this Part relating to a company under administration provides that a period can be varied in accordance with this section, the Court may vary the period on the application of the administrator of the company.

(2) A period of time period can be extended under this section—

(a) more than once in relation to the same company and the same provision; and

(b) after the period has expired.

623. Certain specified periods can be varied by consent

(1) A period specified in section 566(5) or 568(1) may be varied in respect of a company by the administrator with consent.

(2) In subsection (1), "consent" means—

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

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

(3) However, if the administrator has made a statement of the kind to which section 569(1)(b) applies, "consent" means—

(a) if the administrator believes that a distribution may be made to preferential creditors—

(i) the consent of each secured creditor of the company; and

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

(4) Consent for the purposes of subsection (1) may be—

(a) written; or

(b) signified orally at a creditors' meeting.

(5) The power to extend under subsection (1)—

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

(b) may not be exercised to extend a period by more than thirty days;

(c) may not be exercised to extend a period that has been extended by the Court; and

(d) may not be exercised to extend a period after it has expired.

PART IX— COMPANY VOLUNTARY ARRANGEMENTS

Division 1 — Proposals for company voluntary arrangements

624. Interpretation: Division 1

In this Division—

"prescribed publication", in relation to a company, means—

(a) a newspaper circulating in the area in which the company carries on business;

(b) the company's website (if any); or

(c) any other publication of a description prescribed by the insolvency regulations for the purposes of this Part;

"proposal" means a proposal by the directors of a company for a voluntary arrangement made in accordance with section 625;

"proposers" in relation to a proposal for a voluntary arrangement in respect of a company, means the directors making the proposal;

"supervisor" means the person appointed to supervise a voluntary arrangement, and includes any replacement supervisor appointed under section 626 or 627;

"voluntary arrangement",in relation to a company means a composition or scheme of arrangement that has effect as provided by section 630.

625. Proposal for voluntary arrangement

(1) The directors of a company may make a proposal under this Division to the company and to its creditors for a voluntary arrangement under which the company enters into a composition in satisfaction of its debts or a scheme for arranging its financial affairs.

(2) In making such a proposal, the directors shall provide for the appointment of a person to supervise the implementation of the voluntary arrangement.

(3) Only an authorised insolvency practitioner may be appointed to supervise a voluntary arrangement.

(4) A proposal under this Division may also be made—

(a) if the company is under administration—by the administrator; or

(b) if the company is in liquidation—by the liquidator.

626. Procedure if provisional supervisor is not the liquidator or administrator

(1) This section applies if the provisional supervisor in respect of a director's proposal is not the liquidator or administrator of the company and the directors do not propose to take steps to obtain a moratorium for the company under Division 2.

(2) The provisional supervisor shall, within thirty days (or within such extended period as the Court may allow) after that supervisor is given notice of the proposal, submit a report to the Court stating—

(a) whether, in that supervisor's opinion, the proposal has a reasonable prospect of being approved and implemented;

(b) whether, in that supervisor's opinion, meetings of the company and of the company's creditors should be convened to consider the proposal; and

(c) if that supervisor believes that those meetings should be convened- the date on which, and the time and place at which, it is proposed to hold the meetings.

(3) For the purposes of enabling the provisional supervisor to prepare the report, the proposers shall submit to that supervisor—

(a) a document setting out the terms of the proposal; and

(b) a statement of the company's financial position containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed by the insolvency regulations for the purposes of this subsection; and

(ii) such other information as may be so prescribed.

(4) An application may be made to the Court for an order under subsection (5)—

(a) if the provisional supervisor has failed to submit the report required by this section or has died—by the proposers; or

(b) if it is impracticable or inappropriate for that supervisor to continue to act as such—by the proposers or that supervisor.

(5) On the hearing of an application made under subsection (4), the Court may make an order directing the provisional supervisor to be replaced as such by another authorised insolvency practitioner.

627. Provisional supervisor to convene meetings of company and of its creditors

(1) If the provisional supervisor appointed under section 625 is not the liquidator or administrator and has reported to the Court that the meetings referred to in section 626(2) should be convened, that supervisor shall, unless the Court otherwise directs, convene those meetings to be held on the date, and at the time and place, proposed in the report.

(2) If the provisional supervisor is the liquidator or administrator, that supervisor shall convene meetings of the company and of the company's creditors to consider the proposal to be held on such date, and at such time and place, as that

supervisor considers appropriate having regard to where the creditors carry on their businesses or reside.

(3) The persons to be summoned to a creditors' meeting convened under this section are all creditors of the company of whose claims and addresses the provisional supervisor is aware.

(4) The directors of the company may, not later than seven days before the dates on which the meetings are, or either of those meetings is, to be held, give notice to the provisional supervisor of any modifications of the proposal for which the directors intend to seek the approval at those meetings.

628. Conduct of meetings of company and its creditors

(1) The main purpose of a meeting convened under section 627 is to decide whether to approve the proposal or that proposal with modifications.

(2) At the beginning of a creditors' meeting, the meeting shall elect one of their number to be chairperson of the meeting.

(3) At the first meeting of the creditors, the chairperson shall divide the meeting into three groups for voting purposes, with the first group comprising secured creditors (if any), the second group comprising preferential creditors (if any) and the third group comprising unsecured creditors.

(4) A modification to the directors' proposal may be approved only if the company consents to it.

(5) A modification to the directors' proposal may provide for the replacement of the provisional supervisor by another authorised insolvency practitioner who will act as the supervisor of the proposal if it takes effect as a voluntary arrangement.

(6) If the proposal or a modification to it affects the right of a secured creditor of the company to enforce the creditor's security, it may not be approved unless—

(a) the creditor consents to it; or

(b) if the creditor does not consent to it, the creditor—

(i) would be in a position no worse than if the company was in liquidation;

(ii) would receive no less from the assets to which the creditor's security relates, or from their proceeds of sale, than any other secured creditor having a security interest in those assets that has the same priority as the creditor's; and

(ii) would be paid in full from those assets, or their proceeds of sale, before any payment from them or their proceeds is made to any other creditor whose security interest in them is ranked below that of the creditor, or who has no security interest in them.

(7) Subject to this section, the meetings of the company and of the creditors are to be conducted in accordance with the rules (if any) prescribed by the insolvency regulations.

(8) Either meeting may at any time resolve that it be adjourned, or further adjourned.

(9) As soon as practicable after the conclusion of a company meeting or a creditors' meeting, the chairperson of the meeting shall—

(a) report the result of the meeting to the Court; and

(b) immediately after reporting to the Court—give notice of the result of the meeting to those persons who attended the meeting, and to those persons of whom the chairperson is aware who were entitled to attend the meeting but did not do so.

629. Approval of proposal for voluntary arrangement

(1) This section applies to the decisions taken at the meeting of the company and the meeting of the company's creditors held in accordance with section 628 to consider a directors' proposal (with or without modifications).

(2) The proposal (including any modifications) is approved if—

(a) it is a approved—

(i) by a majority the members of the company present (either in person or by proxy) at the meeting of the company; and

(ii) by a majority (in number and value) of the members of each group of creditors present (either in person or by proxy) at the meeting of creditors; or

(b) if, despite not being not approved by a majority of the members referred to in paragraph (a)(i), it is approved by a majority (in number and value) of the members of each of the groups of creditors referred to in paragraph (a)(ii).

(3) For the purposes only of deciding whether the requisite majority by value has voted in favour of a resolution to approve the proposal—

(a) the chairperson of the meeting may—

(i) admit or reject proofs of debt; and

(ii) adjourn the meeting in order to admit or reject proofs of debt; and

(b) a person whose debt has been admitted is a creditor.

(4) At any time before the deadline for making an application under this subsection, any member of the company, or any creditor, who attended or was entitled to attend the meetings may make an application to the Court for an order under subsection (7).

(5) The deadline for making an application under subsection (4) is—

(a) the expiry of thirty days after the holding of the meetings of the company and its creditors (or if the meetings were held on different days, the later of the meetings); or

(b) if the Court extends that period, the expiry of the extended period.

(6) Any member of the company, and any creditor, who attended or was entitled to attend the meetings is entitled to appear and be heard at the hearing of the application even if the member or creditor is not the applicant. The right conferred by this subsection may be exercised by such a member or creditor irrespective of whether the member or creditor supports or has an interest in the implementation of the proposal.

(7) On the hearing of an application made under subsection (4), the Court may —

(a) make an order approving the proposal (with or without the modifications (if any) put to the meetings in accordance with section 628); or

(b) make such other order as it considers appropriate.

(8) The Court may make an order under subsection (7)(a) even if the proposal (or a modification to it)—

(a) was not approved at the company meeting; or

(b) was not approved at the creditors' meeting by a majority of the preferential creditors' group or the unsecured creditors' group, but do so only if the proposal (or the modification)—

(i) has been approved by a majority of the secured creditors' group;

(ii) does not discriminate among the members of the dissenting group or groups of creditors and ensures that they will be no worse off than they would have been if the company had been liquidated; and

(iii) respects the priorities of preferential creditors over unsecured creditors.

630. Approved proposal to take effect as voluntary arrangement and to be binding on company and its creditors

(1) A directors' proposal (with or without modifications) takes effect as a voluntary arrangement by the company on the day after the date on which it is approved by the Court by order made under section 629(7)(a) or on such later date as may be specified in the order.

(2) On taking effect, a voluntary arrangement binds—

(a) every member of the company who—

(i) was entitled to vote at the meeting of the company (whether present or represented at the meeting or not); or

(ii) would have been so entitled if the member had received notice of that meeting; and

(b) every person (including a secured creditor and a preferential creditor) who—

(i) was entitled to vote at the meeting of creditors (whether present or represented at the meeting or not); or

(ii) would have been so entitled if the person had received notice of that meeting,

as if the member or person were a party to the arrangement.

(3) On the approved proposal taking effect as a voluntary arrangement, the provisional supervisor becomes the supervisor of the arrangement unless that supervisor has been replaced in accordance with section 628(5).

(4) If, when a voluntary arrangement ceases to have effect—

(a) any amount payable under the arrangement to a person bound because of subsection (2)(b)(ii) has not been paid; and

(b) the arrangement did not end prematurely,

the company becomes, at that time, liable to pay to that person the amount payable under the arrangement.

(5) If the company is in liquidation or under administration, the Court may make either or both of the following orders:

(a) an order staying all proceedings in the liquidation, or terminating or suspending the appointment of the administrator;

(b) an order giving such directions with respect to the further conduct of the liquidation or the administration as it considers will further the implementation of the voluntary arrangement.

(6) However, the Court may not make an order under subsection (5)(a)—

(a) at any time within thirty days after the first day on which a report required by section 628(9) has been made to the Court; or

(b) at any time—

(i) while an application under section 631, or an appeal in respect of an order made under that section, is pending;

(ii) while an appeal against an order made under that section is pending; or

(iii) during the period within which such an appeal may be made.

631. Certain persons may challenge decisions relating to approved voluntary arrangement by making application to the Court

(1) The following persons may make an application to the Court for an order under this section:

(a) a person who was entitled to vote at the meeting of the company or the meeting of its creditors;

(b) a person who would have been so entitled if the person had had notice of the relevant meeting;

(c) the provisional supervisor or, if the proposal has taken effect as a voluntary arrangement, the supervisor of the arrangement;

(d) if the company is in liquidation or is under administration—the liquidator or administrator.

(2) Such an application may be made on either or both of the following grounds:

(a) that a voluntary arrangement approved under section 629(2) detrimentally affects the interests of a creditor, member or contributory of the company;

(b) a material irregularity has occurred at or in relation to either of the meetings.

(3) An application under subsection (1) may not be made—

(a) after the end of the thirty days from and including the first day on which a report required by section 628(6) has been made to the Court; or

(b) in the case of a person who was not given notice of the creditors' meeting-after the end of the thirty days from and including the day on which the person became aware that the meeting had taken place.

(4) However, an application made by a person referred to in subsection (2)(b) on the ground that the voluntary arrangement detrimentally affects the person's interests may be made after the arrangement has ceased to have effect, unless it has ended prematurely.

(5) If, on hearing an application made under subsection (1), the Court is satisfied as to either of the grounds referred to in subsection (2), it may make orders doing one or both of the following:

(a) revoking or suspending—

(i) any decision approving the voluntary arrangement in accordance with section 629(2); or

(ii) in a case to which subsection (2)(b) applies—any decision taken by the meeting concerned;

(b) directing the supervisor to convene—

(i) further meetings to consider a revised proposal; or

(ii) if subsection (2)(b) applies—a further company meeting, or a further creditors' meeting, to reconsider the original proposal.

(6) If, at any time after making an order under subsection (5)(b) directing meetings to be convened to consider a revised proposal, the Court is satisfied that the maker of the original proposal does not intend to submit a revised proposal, the Court shall, by further order—

(a) revoke the order; and

(b) any order revoking or suspending a decision approving the voluntary arrangement in accordance with section 629.

(7) If the Court makes an order under subsection (5) or (6), it may make such ancillary orders as it considers appropriate and, in particular, orders with respect to action taken under the voluntary arrangement since it took effect.

(8) Except as provided by this section, a decision taken at a meeting held in accordance with section 628 is not invalidated by any irregularity occurring at or in relation to the meeting.

632. Offences involving false representations and fraudulent acts by company officers

(1) An officer of a company who—

(a) makes a false representation for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement; or

(b) fraudulently does, or omits to do, any act for that purpose,

commits an offence and on conviction is liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(2) Subsection (1) applies to a proposal even if it is not approved by the members or creditors of the company concerned.

633. Implementation of approved voluntary arrangement

(1) When a proposal takes effect as a voluntary arrangement, the supervisor becomes responsible for implementing the arrangement in the interests of the company and its creditors and monitoring compliance by the company with the terms of the arrangement.

(2) If, in relation to a voluntary arrangement that has effect under section 630, any of the company's creditors or any other person is dissatisfied with an act, omission or decision of the supervisor, the creditor or person may make an application to the Court for an order under subsection (3).

(3) On the hearing of an application made under subsection (1), the Court—

(a) shall, if satisfied that the ground on which the application was made is substantiated, make—

(i) an order quashing or modifying an act, omission or decision of the supervisor; or

(ii) an order giving the supervisor directions; but

(b) if not so satisfied, shall make an order confirming that act, omission or decision,

and in either case may make such ancillary orders as it considers appropriate.

(4) The Court may, on the application of the supervisor, make an order giving directions in relation to any particular matter arising under the voluntary arrangement.

(5) The supervisor has standing to apply to the Court for the liquidation of the company or for an administrator to be appointed in relation to the company.

(6) If, at any time the Court is satisfied that—

(a) it would be beneficial to appoint a supervisor to replace an existing supervisor, to appoint an additional supervisor or to fill a vacancy; and

(b) it would be inconvenient or impracticable for such an appointment to be made without the assistance of the Court,

the Court may make an order appointing a replacement or additional authorised insolvency practitioner, or an authorised insolvency practitioner to fill the vacancy.

634. Prosecution of delinquent officers of company

(1) This section applies if—

(a) a moratorium under has been obtained for a company under this Division; or

(b) the approval of a voluntary arrangement in relation to a company has taken effect under section 630 or 666.

(2) If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the moratorium or a voluntary arrangement for which the person is criminally liable, the supervisor shall immediately—

(a) report the matter to the Director of Public Prosecutions; and

(b) provide the Director of Public Prosecutions with—

(i) such information relating to that matter; and

(ii) such access to and facilities for inspecting and taking copies of documents under the control of the supervisor and relating to that matter concerned),

as that Direct requires.

(3) On receiving a report made under subsection (2), the Director of Public Prosecutions shall investigate the matter to which the report relates and such other matters relating to the affairs of the company as appear to require investigation, and for that purpose may exercise any of the powers conferred on inspectors appointed under the Companies Act, 2015.

(4) For the purpose of an investigation by the Director of Public Prosecutions under subsection (3), a person has the same obligation to produce documents or give information, or otherwise assist the Director of Public Prosecutions, as the person would have in relation to an inspector appointed under the Companies Act, 2015.

(5) An answer given to a question put to a person in exercise of the powers conferred by subsection (3) may be used in evidence against the person. However,

in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) evidence relating to the answer may not be adduced; and

(b) questions relating to it may not be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person charged.

(6) Subsection (5) applies to all offences other than an offence under section 108 or 114 of the Penal Code (which respectively relate to perjury and subornation of perjury and to false swearing).

(7) If the Director of Public Prosecutions begins criminal proceedings following a report under subsection (2) or an investigation under subsection (3), the supervisor, and every officer and agent of the company (other than the defendant), shall give that Director such assistance in connection with the prosecution as the supervisor, officer or agent is reasonably able to give.

(8) For the purposes of subsection (7)—

(a) "agent" includes—

(i) any banker or advocate of the company; and

(ii) any person employed by the company as its auditor,

and includes a former agent of the company; and

(b) "officer" includes a former officer of the company.

(9) The Court may, on the application of the Director of Public Prosecutions, require any person referred to in subsection (7) to comply with that subsection if the person has failed to do so.

(10 The Director of Public Prosecutions may appoint an advocate to perform the functions, and exercise the powers, of that Director under this section.

(11) If the Director of Public Prosecutions makes such an appointment, the advocate who is appointed has the same functions and powers as that Director has under this section.

635. When voluntary arrangement comes to an end prematurely

For the purposes of this Division, a voluntary arrangement the approval of which has taken effect under section 630(1) ends prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement because of section 630(2).

Division 2 — Moratoria on debt payments when company's directors propose voluntary arrangement

Subdivision 1 — Introductory provisions

636. Interpretation: Division 2

(1) In this Division—

"agreement" includes an agreement or undertaking effected by contract, deed or any other document intended to have effect in accordance with the law of Kenya or another jurisdiction;

"beginning of the moratorium" has the meaning given by section 645(1);

"lodgement date" means the date on which the documents and statements referred to in section 644(1) are lodged with the Court;

"proposal" means a proposal for a voluntary arrangement;

"moratorium" means a moratorium that has taken effect under section 645 and has not ended;

"moratorium committee"means a committee established under section 672;

"person" includes partnership and any other unincorporated group of persons.

(2) For the purposes of this Division, a voluntary arrangement the approval of which has taken effect under section 673 ends prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement because of section 666 (2) (b) (ii).

637. Application of Division 2

This Division has effect with respect to—

(a) companies eligible for a moratorium;

(b) the procedure for obtaining such a moratorium;

(c) the effects of such a moratorium; and

(d) the procedure applicable (instead of Division 1) in relation to the approval and implementation of a voluntary arrangement when such a moratorium is or has been in force.

638. Eligible companies

A company is eligible to obtain a moratorium if it—

(a) complies with such requirements (if any) as may be prescribed by the insolvency regulations; and

(b) is not declared to be an ineligible company by another provision of this Subdivision.

639. Banking and insurance companies ineligible to obtain moratorium

The following companies are ineligible companies for the purposes of section 638:

(a) a company that holds a licence granted under section 5 of the Banking Act (Cap. 488) authorising it to carry on a banking business, a financial business or the business of a mortgage finance company;

(b) a company that is registered under section 19 of the Insurance Act (Cap. 487) .

640. Companies under administration, etc. ineligible to obtain moratorium

(1) The following companies are also ineligible companies for the purpose of section 638:

(a) a company that is under administration;

(b) a company that is in liquidation;

(c) a company in respect of which a voluntary arrangement already has effect;

(d) a company in respect of which a provisional liquidator is appointed;

(e) a company in respect of which a moratorium has had effect at any time during the twelve months ending with the lodgement date and—

(i) a voluntary arrangement was not in effect when the moratorium ended; or

(ii) a voluntary arrangement that had effect during that period ended prematurely;

(f) a company in respect of which an administrator appointed under section 541 held office during the twelve months immediately preceding the lodgement date;

(g) a company in respect of which a voluntary arrangement had been in effect ended prematurely and, during the twelve months immediately preceding the lodgement date, an order under section 630 (7) (a) has been made;

(h) a company in respect of which an administrative receiver is appointed under the repealed Companies Act.

(2) Subsection (1) (b) does not apply to a company that, because of a liquidation order made after the lodgment date, is treated as in liquidation on that date.

641. Certain project companies ineligible

(1) A company is also an ineligible company for the purposes of section 638 if, on the lodgement date, it is a project company of a project that is a public-private partnership project and includes step-in rights.

(2) In subsection (1), "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons; or

(b) that is designed wholly or mainly for the purpose of assisting a public body to perform a function.

(3) For the purposes of this section, a company is a project company for a project if—

(a) it holds property for the purpose of the project;

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;

(c) it is one of a number of companies that together carry out the project;

(d) it has the purpose of supplying finance to enable the project to be carried out; or

(e) it is the holding company of a company to which any of paragraphs (a) to (d) applies.

(4) However, a company is not a project company for a project if, although it performs a function to which paragraphs (a) to (d) of subsection (3) applies, or is a holding company to which any of those paragraphs apply, it also performs a function that is not—

(a) within paragraphs (a) to (d) of that subsection;

(b) related to a function within those paragraphs; or

(c) related to the project.

(5) For the purposes of subsection (1), a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement—

(a) to assume sole or principal responsibility under an agreement for carrying out all or part of the project; or

(b) to make arrangements for carrying out all or part of the project.

(6) In subsection (5), a reference to the provision of finance includes a reference to the provision of an indemnity.

(7) For the purposes of this section, a company carries out all or part of a project whether or not it acts wholly or partly through agents.

(8) In this section—

(a) "public body" means the Government, any State organ or government agency or any body constituted or established under an Act for a public purpose; and

(b) "private person" means any person that is not a public body.

642. Companies with large outstanding liabilities ineligible

(1) A company is also an ineligible company for the purposes of section 638 if, on the lodgement date, it has a liability outstanding under an agreement of one billion shillings or more.

(2) If the liability in subsection (1) is a contingent liability under or because of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this section, a reference to a liability includes—

(a) a present or future liability whether, in either case, it is certain or contingent; and

(b) a reference to a liability to be paid wholly or partly in foreign currency (in which case the equivalent in Kenya shillings is to be calculated as at the time when the liability is incurred).

Subdivision 2 — Obtaining a moratorium

643. What steps company's directors have to take to obtain a moratorium

(1) If the directors of an eligible company wish to make a proposal for a voluntary arrangement, they shall take the required steps to obtain a moratorium for the company.

(2) If the directors of an eligible company wish to obtain a moratorium, they shall—

(a) prepare—

(i) a document setting out the terms of the proposal; and

(ii) a statement of the company's financial position containing such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed by the insolvency regulations for the purposes of this section, and such other information as may be so prescribed; and

(b) unless a provisional supervisor has already been appointed in respect of the proposal—appoint as its provisional supervisor an authorised insolvency practitioner who has consented to supervise it.

(3) After preparing the proposal and statement and, if appropriate, making the appointment, the directors shall submit the proposal and statement to the provisional supervisor for consideration and comment.

(4) If the provisional supervisor requires them to do so, the directors shall provide such other information necessary to enable that supervisor to comply with subsection (5).

(5) The provisional supervisor shall submit to the directors a statement indicating whether or not, in that supervisor's opinion—

(a) the proposal has a reasonable prospect of being approved and implemented;

(b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and

(c) meetings of the company and its creditors should be convened with a view to considering and approving the proposal.

(6) In forming an opinion on the matters referred to in subsection (5), the provisional supervisor is entitled to rely on the information contained in the document and statement submitted under subsection (2), and provided in accordance with subsection (4), unless that supervisor has reason to doubt its accuracy.

(7) The reference in subsection (5)(b) to the company's business is to that business as the company proposes to carry it on during the proposed moratorium.

644. What directors have to do to obtain moratorium

(1) To obtain a moratorium, the directors of a company shall lodge with the Court—

(a) the proposal and statement referred to in section 643(2)(a);

(b) a statement to the effect that the company is eligible for a moratorium and the basis of that eligibility;

(c) a statement from the provisional supervisor that that supervisor has consented to act as supervisor of the proposed arrangement if approved;

(d) a statement from the provisional supervisor that, in that supervisor's opinion—

(i) the proposal has a reasonable prospect of being approved and implemented;

(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and

(iii) meetings of the company and its creditors should be convened to consider the proposal; and

(e) a statement providing such other information (if any) with respect to the company's financial position as is specified in the insolvency regulations for the purposes of this section.

(2) The reference in subsection (1)(d)(ii) to the company's business is to the business as proposed to be carried on by the company during the proposed moratorium.

645. Duration of moratorium

(1) A moratorium takes effect when the documents specified in section 644(1) are lodged with the Court.

(2) A moratorium ends—

(a) at the end of the day on which the meetings held in accordance with section 664 are first held; or

(b) if the meetings are held on different days—at the end of the later of those days,

unless the moratorium period is extended in accordance with section 669.

(3) If either of those meetings has not first been held within thirty days from and including the day on which the moratorium takes effect, the moratorium ends—

(a) at the end of the day on which those meetings were to be held; or

(b) if those meetings were convened to be held on different days—the later of those days,

unless the moratorium period is extended under section 669.

(4) If the provisional supervisor fails to convene either meeting within the required period, the moratorium ends at the end of the last day of that period.

(5) A moratorium that is extended or further extended under section 669 ends at the end of the day to which it is extended or further extended.

(6) Subsections (2) to (5) do not apply if the moratorium ends before the relevant time because of—

(a) section 659(4);

(b) an order under section 660(3), 661(3) or 674; or

(c) a decision of one or both of the meetings held in accordance with section 664.

(7) A moratorium that has not ended as provided by subsections (2) to (6) ends at the end of the day on which a decision under section 664 to approve a voluntary arrangement takes effect under section 666.

(8) The insolvency regulations may increase or reduce the period specified in subsection (3).

646. What happens when moratorium takes effect

(1) When a moratorium takes effect in respect of a company, the directors of the company shall immediately give notice of that fact to the provisional supervisor.

(2) If subsection (1) is not complied with, each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), the directors continue to fail to given the required notice to the provisional supervisor, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

647. Duty of provisional supervisor to publish and give notice that moratorium has taken effect

(1) As soon as practicable after being notified that a moratorium has taken effect, the provisional supervisor shall—

(a) publish—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any)

a notice to the effect that the moratorium has taken effect;

(b) give to any creditor of the company of whose claim that supervisor is aware a notice that it has taken effect; and

(c) lodge a copy of the notice with the Registrar for registration.

(2) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

648. Notification of end of moratorium to be given by provisional supervisor

(1) Within fourteen days after a moratorium has come to an end, the provisional supervisor shall—

(a) publish—

(i) once in the *Gazette*;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any)

a notice to the effect that the moratorium has ended;

(b) give to any creditor of the company of whose claim that supervisor is aware a notice to the effect that the moratorium has ended; and

(c) lodge a copy of the notice with the Registrar for registration.

(2) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

Subdivision 3 — Effects of moratorium

649. Effect of moratorium on creditors and others

(1) While a moratorium has effect in respect of a company—

(a) an application for liquidation the company may not be made;

(b) a meeting of the company may be convened or requisitioned—

(i) only with the consent of the provisional supervisor or with the approval of the Court; and

(ii) if the Court gives approval—subject to such conditions as the Court may impose;

(c) a resolution for the liquidation of the company has no effect;

(d) the Court may not make an order for the liquidation of the company;

(e) an application for an administrator to be appointed in respect of the company may not be made and if made is of no effect;

(f) an administrator of the company may not be appointed under section 534 or 541;

(g) a landlord or other person to whom rent is payable may exercise a right of forfeiture in relation to premises let to the company in respect of a failure by the company to comply with any term of its tenancy of the premises—

(i) only with the approval of the Court; and

(ii) if the Court gives approval—subject to such conditions as the Court may impose;

(h) steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under a credit purchase transaction—

(i) only with the approval of the Court; and

(ii) if the Court gives approval—subject to such conditions as the Court may impose; and

(iii) other proceedings (including execution or other legal process) may be commenced or continued, and distress may be levied, against the company or its property—

(iv) only with the approval of the Court; and

(v) if the Court gives approval—subject to such conditions as the Court may impose.

(2) If an application (other than an excepted application), for the liquidation of the company has been made before the beginning of the moratorium, section 429 does not apply in relation to a disposition of property, transfer of shares or alteration in status made during the moratorium or at a time referred to in section 666(5)(a).

(3) Subsection (1)(a) does not apply to an excepted application and, if such an application has been made before the beginning of the moratorium or is made during the moratorium, subsections (1)(b) and (c) do not apply to or with respect to the hearing of the application.

(4) For the purposes of this section, "excepted application" means an application under—

(a) section 424; or

(b) a provision of any other enactment prescribed by the insolvency regulations for the purposes of this section.

650. *Deleted by Act No. 13 of 2017, Sch.*

651. Security not to be enforced unless it would benefit the company

Security given by a company at a time when a moratorium has effect in relation to the company can be enforced only if, at that time, reasonable grounds existed for believing that enforcement of the security would benefit the company.

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652. Application of sections 653 to 657 to company in respect of which a moratorium has effect

(1) Sections 653 to 657 apply to a company in respect of which a moratorium currently has effect.

(2) The fact that a company enters into a transaction in contravention of a provision of sections 653 to 657 does not of itself—

(a) render the transaction void; or

(b) make it unenforceable against the company.

653. Company invoices and other documents to state provisional supervisor's name and that moratorium has effect

(1) A company in respect of which a moratorium has effect shall ensure that every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, specifies—

(a) the provisional supervisor's name; and

(b) a statement that the moratorium has effect in respect of the company.

(2) If the company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

654. Restrictions on company obtaining credit during moratorium

(1) A company in respect of which a moratorium has effect may not obtain credit exceeding twenty-five thousand shillings from a person who has not been informed that a moratorium has effect in respect of the company.

(2) The reference to the company obtaining credit includes (but is not limited to) the following cases:

(a) if goods are bailed to the company under a credit purchase transaction;

(b) if the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) If the company obtains credit in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence.

(4) A company that is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding two million shillings.

(5) An officer of a company who is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

(6) The insolvency regulations may increase or reduce the amount specified in subsection (1).

655. Restrictions on disposal of property and making payments by company

(1) Subject to subsection (2), a company in respect of which a moratorium has effect may dispose of any of its property only if—

(a) there are reasonable grounds for believing that the disposal will benefit the company; and

(b) the disposal is approved by the moratorium committee or, if there is no such committee, by the provisional supervisor.

(2) Subsection (1) does not apply to a disposal—

(a) made in the ordinary course of the company's business; or

(b) made in accordance with an order of the Court.

(3) If a company disposes of any of its property in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence.

(4) A company that is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding two million shillings.

(5) An officer of a company who is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

656. Restriction on company paying debts and other liabilities

(1) Subject to subsection (2), a company in respect of which a moratorium has effect may make a payment in respect of a debt or other liability of the company that was in existence before the beginning of the moratorium only if—

(a) there are reasonable grounds for believing that the payment will benefit the company; and

(b) the payment is approved by the moratorium committee or, if there is no such committee, by the provisional supervisor.

(2) Subsection (1) does not apply to a payment—

(a) required by section 657(6); or

(b) made in accordance with an order of the Court.

(3) If a company makes a payment in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence.

(4) A company that is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding one million shillings.

(5) An officer of a company who is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

657. Circumstances in which company may dispose of property and goods that are subject to a security or held under credit purchase transaction

(1) This section applies to—

(a) property of the company that is subject to a security; and

(b) goods that are in the possession of the company under a credit purchase transaction.

(2) A company may transfer property to which this section applies as if it were not subject to the security, but only if—

(a) the holder of the security consents; or

(b) the Court gives its approval.

(3) A company may dispose of goods to which this section applies as if all rights of the owner under the credit purchase transaction were vested in the company, but only if—

(a) the owner of the goods consents; or

(b) the Court gives its approval.

(4) Subsection (5) applies to property of a company that is subject to a security that, as created, was a floating charge.

(5) If property of a company to which this subsection applies is transferred under subsection (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the transferred property as the holder would have had in respect of the property that is subject to the security.

(6) Subsection (7) applies to—

(a) the transfer under subsection (2) of property that is subject to a security other than a security that, as created, was a floating charge; and

(b) the disposal under subsection (3) of goods that are in the possession of the company under a credit purchase transaction.

(7) It is a condition of a consent or an approval under subsection (2) or (3)—

(a) that the net proceeds of the transfer or disposal are to be applied; and

(b) if those proceeds are less than such amount as may be agreed, or determined by the Court, to be the net amount that would be realised on a sale of the property or goods in the open market by a willing vendor—that an amount necessary to make good the deficiency is to be applied,

towards discharging the amount secured by the security or payable under the credit purchase transaction.

(8) If a condition imposed by subsection (7) relates to two or more securities, that condition requires—

(a) the net proceeds of the disposal; and

(b) if subsection (7)(b) applies—the amount referred to in that paragraph,

to be applied towards discharging the amount secured by those securities in the order of their priority.

(9) If the Court gives approval for a transfer or disposal under subsection (2) or (3), the directors shall, within fourteen days after approval is given, lodge with the Registrar for registration a copy of the order giving approval.

(10) If the directors fail to comply with subsection (9), each of them who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(11) If, after any of the directors has been convicted of an offence under subsection (10), the directors continue to fail to lodge the required copy with the Registrar for registration, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

Subdivision 4 — Provisional supervisors

658. Provisional supervisor to monitor activities of company during moratorium

(1) During the moratorium, the provisional supervisor is responsible for monitoring the company's activities in order to ascertain whether—

(a) the proposal or, if that supervisor has received notice of proposed modifications in accordance with section 663(3), the proposal

as modified, has a reasonable prospect of being approved and implemented; and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) On being requested to do so by the provisional supervisor, the directors of the company shall provide to that supervisor information necessary to enable that supervisor to comply with subsection (1).

(3) In ascertaining the matters referred to in subsection (1), the provisional supervisor is entitled to rely on the information provided by the directors under subsection (2) unless that supervisor has reason to doubt its accuracy.

(4) The reference in subsection (1)(b) to the company's business is to that business as proposed to be carried on by the company during the remainder of the moratorium.

(5) If the directors fail to comply with a request made by the provisional supervisor under subsection (2), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a director has been convicted of an offence under subsection (5), the directors continue to fail comply with the request or another such request, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

659. Withdrawal of provisional supervisor's consent to act

(1) Except with the approval of the Court, a provisional supervisor may withdraw consent to monitor a moratorium only if, during the moratorium—

(a) that supervisor concludes that—

(i) the proposal or, if that supervisor has received notice of proposed modifications under section 663(3), the proposal as modified no longer has a reasonable prospect of being approved or implemented; or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;

(b) that supervisor becomes aware that the company was not, on the lodgement date, eligible for a moratorium; or

(c) the directors fail to comply with their duty under section 658(2).

(2) The reference in subsection (1)(a)(ii) to the company's business is to the business that the company proposes to carry on during the remainder of the moratorium.

(3) If the provisional supervisor's consent is withdrawn, the moratorium ends.

(4) Within seven days after withdrawing consent, the provisional supervisor shall—

(a) give to the company and any creditor of whose claim that supervisor is aware a notice of withdrawal of consent together with a statement of reasons for the withdrawal; and

(b) lodge a copy of that notice with the Registrar for registration.

(5) A provisional supervisor who withdraws consent to monitor a moratorium without reasonable excuse commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(6) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (4) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(7) If, after being convicted of an offence under subsection (6), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

660. Creditors and others may challenge provisional supervisor's conduct during moratorium by application made to the Court

(1) Any creditor, director or member of the company, or any other person affected by a moratorium, who is dissatisfied with an act, omission or decision of the provisional supervisor during the moratorium may apply to the Court for an order under subsection (3).

(2) An application may be made during the moratorium or after it has ended.

(3) On the hearing of an application under subsection (1), the Court may make —

(a) an order confirming, reversing or modifying the act or decision complained of;

(b) an order giving directions to the provisional supervisor with respect to the conduct of the moratorium; or

(c) such other order as it considers appropriate.

(4) An order under subsection (3) may (among other things) end the moratorium and, if it does, it may make such consequential provision as the Court considers necessary.

661. Creditor may pursue claim against provisional supervisor for loss

(1) If there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the provisional supervisor during the moratorium, the company has sustained loss; and

(b) the company does not intend to pursue any claim it may have against that supervisor,

any creditor of the company may make an application to the Court for an order under subsection (3).

(2) Such an application may be made during the moratorium or after it has ended.

(3) On the hearing of such an application, the Court may make—

(a) an order directing the company to pursue any claim against the provisional supervisor;

(b) an order authorising any creditor to pursue such a claim in the name of the company; or

(c) such other order with respect to such a claim as it considers appropriate,

unless the Court is satisfied that the act, omission or decision of that supervisor was reasonable in the circumstances.

(4) An order under subsection (3) may (among other things) do all or any of the following:

(a) impose conditions on any authority given to pursue a claim;

(b) direct the company to assist in pursuing a claim;

(c) give directions with respect to the distribution of money or other property received as a result of pursuing a claim;

(d) end the moratorium and, if it does, make such consequential provisions as the Court considers necessary.

(5) When hearing the application, the Court shall have regard to the interests of the members and creditors of the company as a whole.

662. Replacement of provisional supervisor by the Court

(1) An application may be made to the Court for an order under subsection (3)—

(a) if the provisional supervisor has failed to comply with any duty imposed on that supervisor under this Division or has died—by the directors of the company; or

(b) if it is impracticable or inappropriate for that supervisor to continue as such—by those directors or that supervisor.

(2) On the hearing of an application made under subsection (1), the Court may make an order directing the provisional supervisor to be replaced as such by another authorised insolvency practitioner.

(3) An authorised insolvency practitioner may be appointed as a replacement provisional supervisor under this section only if the practitioner has lodged with the Court a written consent to act as such.

Subdivision 5 — Consideration of proposal for and implementation of voluntary arrangement

663. Provisional supervisor to convene meetings of the company and its creditors

(1) When a moratorium has effect, the provisional supervisor shall convene—

(a) a meeting of the company; and

(b) a meeting of the company's creditors,

to be held on such dates within the period specified in section 645(3), and at such times and places, as that supervisor considers appropriate.

(2) The persons to be summoned to a creditors' meeting under this section are all those creditors of the company of whose claims the provisional supervisor is aware.

(3) The directors of the company may, not later than seven days before the dates on which the meetings are, or either of those meetings is, to be held, give notice to the provisional supervisor of any modifications of the proposal for which the directors intend to seek the approval at those meetings.

(4) The provisional supervisor may convene as many meetings of the company and of its creditors as appear to be necessary for the purposes of this section.

664. Conduct of meetings of company and its creditors

(1) The main purpose of the first meeting convened under section 663 is to decide whether to approve the proposal or that proposal with modifications.

(2) At the beginning of a creditors' meeting, the meeting shall elect one of their number to be chairperson of the meeting. However, if a previous creditors' meeting has been held and a creditor was elected to be chairperson of that meeting, that creditor is to be chairperson of subsequent creditors' meetings unless those creditors present at such a meeting elect another creditor in place of that creditor.

(3) At the first meeting of creditors, the chairperson shall divide the meeting into three groups for voting purposes, with the first group comprising secured creditors (if any), the second group comprising preferential creditors (if any) and the third group comprising unsecured creditors.

(4) A modification to the proposal may be approved only if the company consents to it.

(5) A modification to the proposal may provide for the replacement of the provisional supervisor by another authorised insolvency practitioner who will act as the supervisor of the proposal if it takes effect as a voluntary arrangement.

(6) If the proposal or a modification to it affects the right of a secured creditor of the company to enforce the creditor's security, it may not be approved unless—

(a) the creditor consents to it; or

(b) if the creditor does not consent to it, the creditor—

(i) would be in a position no worse than if the company was in liquidation;

(ii) would receive no less from the assets to which the creditor's security relates, or from their proceeds of sale, than any other secured creditor having a security interest in those assets that has the same priority as the creditor's; and

(iii) would be paid in full from those assets, or their proceeds of sale, before any payment from them or their proceeds is made to any other creditor whose security interest in them is ranked below that of the creditor, or who has no security interest in them.

(7) Subject to this section, the meetings of the company and of the creditors are to be conducted in accordance with the rules (if any) prescribed by the insolvency regulations for the purposes of this section.

(8) Either meeting may at any time resolve that it be adjourned, or further adjourned.

(9) The chairperson of each meeting shall, as soon as practicable after the conclusion of the meeting—

(a) report the result of the meeting to the Court; and

(b) immediately after doing so, give notice of the result of the meeting to all persons to whom the notice convening the meeting was sent.

665. Approval of proposal for voluntary arrangement

(1) This section applies to the decisions taken at the meeting of the company and the meeting of the company's creditors held in accordance with section 664 to consider a proposal for a voluntary arrangement (with or without modifications).

(2) The proposal (including any modifications) is approved if—

(a) it is a approved—

(i) by a majority the members of the company present (either in person or by proxy) at the meeting of the company; and

(ii) by a majority (in number and value) of the members of each group of creditors present (either in person or by proxy) at the meeting of creditors; or

(b) if, despite not being not approved by a majority of the members referred to in paragraph (a)(i), it is approved by a majority (in number and value) of the members of each of the groups of creditors referred to in paragraph (a)(ii).

(3) For the purposes only of deciding whether the requisite majority by value has voted in favour of a resolution to approve the proposal—

(a) the chairperson of the meeting may—

(i) admit or reject proofs of debt; and

(ii) adjourn the meeting in order to admit or reject proofs of debt; and

(b) a person whose debt has been admitted is a creditor.

(4) At any time before the deadline for making an application under this subsection, any member of the company, or any creditor, who attended or was entitled to attend the meetings may make an application to the Court for an order under subsection (7).

(5) The deadline for making an application under subsection (4) is—

(a) the expiry of thirty days after the holding of the meetings of the company and its creditors (or if the meetings were held on different days, the later of the meetings); or

(b) if the Court extends that period, the expiry of the extended period.

(6) Any member of the company, and any creditor, who attended or was entitled to attend the meetings is entitled to appear and be heard at the hearing of the application even if the member or creditor is not the applicant. The right conferred by this subsection may be exercised by such a member or creditor irrespective of whether the member or creditor supports or has an interest in the implementation of the proposal.

(7) On the hearing of an application made under subsection (4), the Court may —

(a) make an order approving the proposal (with or without the modifications (if any) put to the meetings in accordance with section 664); or

(b) make such other order as it considers appropriate.

(8) The Court may make an order under subsection (7)(a) even if the proposal (or a modification to it)—

(a) was not approved at the company meeting; or

(b) was not approved at the creditors' meeting by a majority of the preferential creditors' group or the unsecured creditors' group, but only if the proposed arrangement (or modification)—

(i) has been approved by a majority of the secured creditors' group;

(ii) does not discriminate among the members of the dissenting group or groups of creditors and ensures that they will be no worse off than they would have been if the company had been liquidated; and

(iii) respects the priorities of preferential creditors over unsecured creditors.

666. Voluntary arrangement binding on company and creditors

(1) A proposal (with or without modifications) takes effect as a voluntary arrangement by the company on the day after the date on which it is approved by the Court by order made under section 665(7)(a) or on such later date as may be specified in the order.

(2) On taking effect, a voluntary arrangement binds—

(a) every member of the company who—

(i) was entitled to vote at the meeting of the company (whether present or represented at the meeting or not); or

(ii) would have been so entitled if the member had received notice of that meeting; and

(b) every person (including a secured creditor and a preferential creditor) who—

(i) was entitled to vote at the meeting of creditors (whether present or represented at the meeting or not); or

(ii) would have been so entitled if the person had received notice of that meeting,

as if the member or person were a party to the arrangement.

(3) If—

(a) when the arrangement ends—an amount payable under the arrangement to a person bound because of subsection (2)(b)(ii) has not been paid; and

(b) the arrangement did not end prematurely,

the company immediately becomes liable to pay the amount to that person.

(4) If an application for the liquidation of the company, other than an excepted application, was made before the beginning of the moratorium, the Court shall dismiss the application.

(5) The Court may not dismiss such an application—

(a) before the expiry of thirty days from and including the first day on which each of the reports of the meetings required by section 664(9) was made to the Court;

(b) while an application under section 667 is pending; or

(c) while an appeal against an order made under that section is pending; or

(d) during the period within which such an appeal may be made.

(6) In this section, “excepted application” has the meaning given by section 649(4) (effect of moratorium on creditors and others).

667. Right to challenge decisions relating to approved voluntary arrangement

(1) The following persons may make an application to the Court for an order under subsection (5):

(a) a person entitled to vote at the company meeting or the creditors' meeting;

(b) a person who would have been entitled to vote at the creditors' meeting if the person had had notice of it;

(c) the provisional supervisor or, if the proposal has taken effect as a voluntary arrangement, the supervisor of the arrangement.

(2) Such an application may be made on one or both of the following grounds:

(a) that, in the case of a voluntary arrangement that was approved at the meetings held in accordance with section 664 and has taken effect, the arrangement detrimentally affects the interests of a creditor, member or contributory of the company;

(b) that some material irregularity has occurred at or in relation to either the company meeting or the creditors' meeting.

(3) An application under subsection (1) is ineffective unless it is made—

(a) within thirty days from and including the first day on which both of the reports required by section 664(10) have been made to the Court; or

(b) in the case of a person who was not given notice of the creditors' meeting—within thirty days from and including the day on which the person first became aware that the meeting had taken place.

(4) However, an application made by a person referred to in subsection (1)(b) on the ground that the arrangement detrimentally affects the person's interests may be made after the arrangement has ceased to have effect, unless the arrangement ended prematurely.

(5) If, on the hearing of an application made under this section, the Court is satisfied as to either of the grounds referred to in subsection (2), it may do any of the following—

(a) make an order revoking or suspending—

(i) any decision approving the voluntary arrangement in accordance with section 664, (conduct of meetings of company and its creditors); or

(ii) in a case in which paragraph (b) of subsection (2) is relevant—any decision taken at a meeting referred to in that paragraph;

(b) give a direction to the provisional supervisor or the supervisor—

(i) to convene further meetings to consider a revised proposal for a voluntary arrangement that the directors may make; or

(ii) in a case in which paragraph (b) of subsection (2) is relevant—to convene a further meeting, or a further creditors' meeting, to reconsider the original proposal.

(6) If, at any time after giving a direction under subsection (5)(b)(i), the Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement that has effect under section 666.

(7) If the Court gives a direction under subsection (5)(b), it may also give a direction continuing or, renewing, for such period as may be specified in the direction, the effect of the moratorium.

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(8) Subsection (9) applies if the Court, on the hearing of an application made under this section—

(a) gives a direction under subsection (5)(b); or

(b) revokes or suspends a decision under subsection (5)(a) or (6).

(9) In such a case, the Court may give such ancillary directions as it considers appropriate and, in particular, directions with respect to—

(a) acts done or omitted to be done under the voluntary arrangement since it took effect; and

(b) such acts done or omitted to be done since that time as could not have been done if a moratorium had been in effect in relation to the company when they were done or omitted to be done.

(10) Except a provided by this section, a decision taken at a meeting held in accordance with section 664 is not invalidated by an irregularity arising at or in relation to the meeting.

668. Implementation of voluntary arrangement

(1) When a voluntary arrangement has taken effect, the provisional supervisor who was appointed in respect of the moratorium becomes the supervisor of the voluntary arrangement, unless another insolvency practitioner is nominated to replace that supervisor in accordance with a modification made to the arrangement under section 664(5), in which case that practitioner becomes the supervisor of the arrangement.

(2) While the voluntary arrangement has effect, the supervisor is responsible for implementing the arrangement in the interests of the company and its creditors and monitoring its compliance by the company in accordance with its terms.

(3) A creditor the company, or any other person, who is dissatisfied with any act, omission or decision of the supervisor of the voluntary arrangement may apply to the Court for an order under subsection (4).

(4) On the hearing of an application made under subsection (3), the Court may —

(a) make an order confirming, reversing or modifying the act or decision of the supervisor of the voluntary arrangement;

(b) make an order giving the supervisor directions as to how to proceed with the supervision; or

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

(5) The supervisor—

(a) may apply to the Court for directions in relation to any particular matter arising under that arrangement; and

(b) is included among the persons who may apply to the Court for a liquidation order or administration order to be made in respect of it.

(6) A creditor of a company in respect of which a voluntary arrangement has effect, or any other person who claims to have a legitimate interest in the matter, may make an application to the Court for an order appointing an authorised insolvency practitioner—

(a) to replace an existing supervisor of the arrangement;

(b) as an additional supervisor of the arrangement; or

(c) to fill a vacancy in the position of supervisor of the arrangement.

(7) If, on the hearing of such an application the Court considers—

(a) that it be in the best interests of the company and its creditors to make the appointment; and

(b) that it would be difficult or impracticable for the appointment to be made without the assistance of the Court,

it shall make an order appointing the authorised insolvency practitioner specified in the application, or nominated by the applicant, to be a supervisor of the voluntary arrangement, but otherwise it shall refuse the application.

Subdivision 6 — Extension of moratorium

669. Circumstances in which moratorium may be extended

(1) Subject to subsection (2), a meeting held under section 664 that resolves that the meeting be adjourned or further adjourned may resolve that the moratorium be extended or further extended, with or without conditions.

(2) The moratorium may not be extended or further extended to a day later than the end of the period of two months from and including—

(a) if both meetings convened under section 663 are first held on the same date—that date; or

(b) in any other case—on the date on which the later of those meetings is first held.

(3) At any meeting at which it is proposed to extend or further extend the moratorium, before a decision is taken with respect to that proposal, the provisional supervisor shall inform the meeting of—

(a) the action (if any) taken by that supervisor to comply with the duty imposed by section 658 and the cost involved in taking that action; and

(b) the action that that supervisor intends to take to continue to comply with that duty should the moratorium be extended or further extended and the expected cost of taking that action.

(4) If, in accordance with subsection (3)(b), the provisional supervisor informs a meeting of the expected cost of that supervisor's intended action, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the provisional supervisor's intended action has effect under section 673, the moratorium ends.

(6) A meeting may resolve that a moratorium that has been extended, or further extended, be ended before the end of the period of the extension or further extension.

(7) The insolvency regulations may provide for the period specified in subsection (2) to be increased or reduced.

670. Conditions for extension of moratorium

(1) The conditions that may be imposed when a moratorium is extended or further extended include a requirement that the provisional supervisor be replaced as such by another authorised insolvency practitioner.

(2) An authorised insolvency practitioner may be appointed as a replacement provisional supervisor as provided by subsection (1) only if the practitioner has lodged with the Court a written consent to act as such.

(3) At any meeting at which it is proposed to appoint a replacement provisional supervisor as a condition of extending or further extending the moratorium—

(a) the duty imposed by section 669(3)(b) on that supervisor is instead imposed on the person proposed as the replacement provisional supervisor; and

(b) sections 669(4) and (5) and 673(2)(e) apply as if the references to the provisional supervisor were to that person.

671. Decisions to extend or further extend moratorium

(1) If a decision to extend, or further extend, the moratorium takes effect under section 673, the provisional supervisor shall give notice of the decision to the Court and, within seven days of having done so, lodge a copy of the notice with the Registrar for registration.

(2) If the moratorium is extended, or further extended, because of an order under section 673(6), the provisional supervisor shall lodge a copy of the order with the Registrar for registration.

(3) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(4) If, after being convicted of an offence under subsection (3), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

672. Meeting of company or creditors may establish moratorium committee

(1) A meeting convened in accordance with section 663 that resolves that the moratorium be extended or further extended may, with the consent of the provisional supervisor, resolve that a committee be established to perform the functions imposed on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the performance of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the performance of its functions are reimbursable by the provisional supervisor or, if the proposal has taken effect as a voluntary arrangement, the supervisor of the arrangement.

(4) A moratorium committee ceases to exist when the moratorium ends.

Subdivision 7 — Supplementary provisions

673. Effect of certain decisions of meetings of company and company's creditors

(1) If a decision is made under this Division with respect to a matter to which this section applies, the decision has effect if—

(a) it has been taken by both meetings held in accordance with section 664; or

(b) subject to any order made under subsection (6)—it has been taken by the creditors' meeting held in accordance with that section.

(2) This section applies to the following matters:

(a) the extension or further extension of a moratorium;

(b) the ending of a moratorium;

(c) the establishment of a moratorium committee;

(d) the approval of the expected cost of a provisional supervisor's intended actions.

(3) If a decision taken by a creditors' meeting under this Division with respect to any of the matters to which this section applies differs from one so taken by the company meeting with respect to that matter, the decision taken at the creditors' meeting prevails.

(4) However, a member of the company who is dissatisfied with the decision taken by the creditors' meeting and the resultant effect of subsection (3) may apply to the Court for an order under subsection (6).

(5) An application under subsection (4) has no effect unless it is made within thirty days from and including—

(a) the date on which the decision was taken by the creditors' meeting; or

(b) if the decision of the company meeting was taken on a later date—that date.

(6) On the hearing of an application made under subsection (4), the Court may —

(a) make an order directing the decision of the company meeting to have effect instead of the decision of the creditors' meeting; or

(b) make such other order as it considers appropriate,

but only if it is satisfied that the order would be in the best interests of the company and its creditors.

674. Member or creditor of company may challenge actions of directors

(1) This section applies to and in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the Court for an order under this section on the ground—

(a) that the company's affairs and property are being or have been managed by the directors in a manner that is detrimental to the interests of its creditors or members generally, or of a specific class of its creditors or members (including at least the applicant); or

(b) that any actual or proposed act or omission of the directors is or would be detrimental to those or any of those interests.

(3) An application for an order under this section may be made during or after the moratorium.

(4) On the hearing of an application for an order made under this section, the Court may—

(a) make such order as it considers appropriate for giving relief in respect of the matters complained of;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make an interim order or such other order as it considers appropriate.

(5) In particular, an order under this section may—

(a) regulate the management by the directors of the company's affairs and property during the remainder of the moratorium;

(b) require the directors—

(i) to refrain from doing or continuing an act complained of by the applicant; or

(ii) to do an act that the applicant has complained they have omitted to do;

(c) require a meeting of creditors or members to be convened for the purpose of considering such matters as the Court may specify;

(d) end the moratorium and make such consequential provision as the Court considers appropriate.

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

(7) An application for an order under this section may be made only by the administrator or, if there is one, the liquidator, if—

(a) the appointment of an administrator has effect in relation to the company and that appointment was made in accordance with—

(i) an application for administration of the company; or

(ii) a notice of intention to make such an appointment,

made before the moratorium took effect; or

(b) the company is in liquidation in accordance with an application made before the moratorium took effect.

675. Offences under this Division

(1) This section applies to a company in respect of which a moratorium has or had effect.

(2) A person who, at any time during the twelve months immediately preceding the date on which the moratorium took effect was an officer of the company—

(a) did an act specified in subsection (4); or

(b) was privy to the doing by others of an act specified in subsection (4)(c), (d) or (e),

is taken to have committed an offence at that time.

(3) A person who, during the moratorium, is an officer of the company, commits an offence if the person—

(a) does an act specified in subsection (4); or

(b) is privy to the doing by others of an act specified in subsection (4)(c), (d) or (e).

(4) The following acts are specified for the purpose of subsections (2) and (3):

(a) concealing any part of the company's property to the value of fifty thousand shillings or more, or concealing any debt due to or from the company;

(b) fraudulently removing any part of the company's property to the value of fifty thousand shillings or more;

(c) concealing, destroying, mutilating or falsifying any record affecting or relating to the company's property or affairs;

(d) making a false entry in any record affecting or relating to the company's property or affairs;

(e) fraudulently parting with, altering or making any omission from a document that affects or relates to the company's property or affairs;

(f) pawning, creation of a security right or disposing of property of the company that has been obtained on credit and has not been paid for (unless the pawning, creation of a security right or disposal was in the ordinary course of the company's business).

(5) In a prosecution for an offence under subsection (2) or (3) in relation to an act specified in subsection (4)(a) or (f), it is a defence to prove that the defendant had no intention to defraud.

(6) In a prosecution for an offence under subsection (2) or (3) in relation to an act specified in subsection (4)(c) or (d), it is a defence to prove that the defendant had no intention to conceal the state of affairs of the company or to defeat the law.

(7) If a person pawns, creates a security right or disposes of any property of a company in circumstances that would constitute an offence under subsection (2) or (3), each person who takes in pawn or security right, or otherwise receives, the property knowing it to be pawned, encumbered by a security right or disposed of in circumstances that—

(a) would, if a moratorium were obtained for within the twelve months beginning with the day on which the pawning, creation of a security right or disposal took place, constitute an offence under subsection (2); or

(b) constitute an offence under subsection (3), commits an offence.

(8) A person found guilty of an offence under this section is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

(9) The insolvency regulations may increase or reduce the amounts specified in subsection (4).

[Act No. 13 of 2017. Sch.]

676. *Deleted by Act No. 13 of 2017, Sch*.

PART X—PROVISIONS APPLICABLE TO COMPANIES THAT ARE EITHER IN LIQUIDATION OR UNDER ADMINISTRATION

677. Interpretation: Part X

In this Part—

"deliver", in relation to documents or other property, includes surrender and transfer;

"relevant office-holder" means—

(a) in relation to a company under administration—the administrator;

(b) in relation to a company in liquidation—the liquidator or the provisional liquidator.

678. Realising property of company that is in liquidation or under administration

(1) This section applies to a company that is under administration or in liquidation.

(2) If a person has control over money, documents or other property to which the company appears to be entitled, the Court may require that person immediately, or within such period as the Court may direct, to pay the money or deliver the documents or other property to the relevant office-holder.

(3) Subsection (4) applies if the relevant office-holder—

(a) seizes or disposes of property that is not property of the company; and

(b) at the time of seizure or disposal believes on reasonable grounds that the office-holder is entitled (whether under an order of the Court or otherwise) to seize or dispose of the property.

(4) When this subsection applies, the relevant office holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by that office-holder's own negligence; and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

679. Duty of certain persons to co-operate with relevant office-holder

(1) In this section, "relevant office holder", in relation to a company, also includes the Official Receiver even if not the liquidator.

(2) This section applies to the following persons:

(a) those who are or have at any time been officers of the company;

(b) those who have taken part in the formation of the company at any time within the twelve months immediately preceding the effective date;

(c) those who are in the employment of the company, or have been in its employment within that period, and are in the office-holder's opinion capable of giving the required information;

(d) those who are, or have within that period been, officers of, or in the employment of, another company that is, or within period was, an officer of the relevant company;

(e) if the company is being liquidated by the Court—any person who has acted as administrator, administrative receiver or liquidator of the company.

(3) A person to whom this section applies shall—

(a) give to the relevant office-holder such information concerning the company and its promotion, formation, affairs or property as that office-holder may at any time after the effective date reasonably require; and

(b) appear before that office-holder at such times as that office-holder may reasonably require.

(4) For the purposes of subsections (2) and (3), "the effective date", in relation to a company, is whichever of the following dates is applicable:

(a) the date on which the company entered administration;

(b) the date on which a provisional liquidator was appointed in respect of the company;

(c) the date on which the liquidation of the company commenced.

(5) A person who, without reasonable excuse, fails to comply with a requirement imposed by this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (5), the person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is to fine not exceeding fifty thousand shilling for each such offence.

(7) In this section, "employment" includes employment under a contract for the supply of services.

680. Power of the Court to conduct inquiry into insolvent company's dealings, etc. on application made by relevant office-holder

(1) In this section, "relevant office holder", in relation to a company, includes the Official Receiver even if not the liquidator.

(2) On the application of the relevant office-holder, the Court may summon to appear before it—

(a) any officer of the company;

(b) any person who is known or suspected to have control over any property of the company or believed to be indebted to the company; or

(c) any person whom the Court believes capable of giving information concerning the promotion, formation, affairs or property of the company.

(3) The Court may require a person referred to in subsection (2)(a) to (c) to submit an affidavit to the Court containing an account of the person's dealings with the company or to produce any documents under the person's control relating to the company or the promotion, formation, affairs or property of the company.

(4) This subsection applies if—

(a) after being summoned to appear before the Court under subsection (2), a person without reasonable excuse fails to appear before the Court; or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding having to appear before the Court under that subsection.

(5) When subsection (4) applies, the Court may, for the purpose of bringing before the Court the person and anything under the person's control, issue a warrant to a police officer or an officer of the Court—

(a) for the person's arrest; and

(b) for the seizure of any money, documents or other property that is under the person's control.

(6) If the Court has issued a warrant under subsection (5), it may authorise—

(a) a person arrested under the warrant to be kept in custody; and

(b) anything seized under the warrant to be held, until the person is brought before the Court under the warrant or until such other time as the Court may order.

681. Court's enforcement powers under section 680

(1) If, after considering the evidence obtained under section 680 or this section, it appears to the Court that a person has control over property of the company,

the Court may, on the application of the relevant office-holder, order the person to deliver the whole or any part of the property to that office-holder at such time, in such manner and on such terms as the Court considers appropriate.

(2) If , after considering the evidence so obtained, it appears to the Court that a person is indebted to the company, the Court may, on the application of the relevant office-holder, order the person to pay to that office holder, at such time and in such manner as the Court may direct, the whole or any part of the amount due (whether in full discharge of the debt or otherwise) as the Court considers appropriate.

(3) A person who appears or is brought before the Court under section 680 or this section can be examined on oath about matters concerning the company or the promotion, formation, affairs or property of the company.

682. Power of the Court to set aside transaction that is under value

(1) This section applies to a company that is under administration or in liquidation.

(2) In this section, "relevant time" has the meaning given by section 684.

(3) On forming the reasonable belief the company has, at a relevant time, entered into a transaction with a person at an undervalue, the relevant office-holder may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court finds that the transaction was undervalue, it shall make an order setting aside the transaction and restoring the position to that which would have existed if the company had not entered into the transaction.

(5) For the purposes of this section and section 685, a company enters into a transaction with a person at undervalue if—

(a) the company makes a gift to the person or otherwise enters into a transaction with the person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with the person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(6) The Court may not make an order under subsection (4) in respect of a transaction at an undervalue if it is satisfied—

(a) that the company that entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

683. Power of the Court to void certain preferences

(1) In this section, "relevant time" has the meaning given by section 684.

(2) If of the view that a company has at a relevant time given a preference to a person, the relevant office-holder may apply to the Court for an order under subsection (3).

(3) If, on the hearing of an application made under subsection (2), the Court is satisfied that the company has at a relevant time given a preference to a person, it shall make an order voiding the act constituted by giving the preference and

restoring the position that which would have existed if the preference had not been given.

(4) For the purposes of this section and section 685, a company gives a preference to a person if—

(a) the person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(b) the company does any act or allows an act to be done that (in either case) has the effect of placing the person in a position that, if the company were in insolvent liquidation, is better than the position the person would have been in had that act not been done.

(5) The Court may not make an order under subsection (3) in respect of a preference given to a person unless it is satisfied that the company that gave the preference was influenced in deciding to give it by a wish to produce in relation to that person the effect referred to in subsection(4)(b).

(6) A company that has given a preference to a person connected with the company (otherwise than by being its employee) at the time when the preference was given is presumed, in the absence of evidence to the contrary, to have been influenced in deciding to give it by such a wish as is referred to in subsection (5).

(7) The fact that action has been taken in accordance with the order of a Court does not, without more, prevent the doing or suffering of that action from constituting the giving of a preference.

684. What "relevant time" means in sections 682 and 683

(1) Subject to subsection (3), the time at which a company enters into a transaction at an undervalue is a relevant time if the transaction is entered into at a time—

(a) during the two years immediately preceding the onset of insolvency;

(b) between the making of an administration application in respect of the company and the making of an administration order on the application; or

(c) between lodgement with the Court of a copy of notice of intention to appoint an administrator under section 534 or 541 and the making of an appointment under that section.

(2) Subject to subsection (3), the time at which a company gives a preference is a relevant time if the preference is given—

(a) in the case of a preference given to a person connected with the company otherwise than as its employee—at a time during the two years immediately preceding the onset of insolvency;

(b) in the case of a preference that is not a transaction entered into at an undervalue and is not so given—at a time during the six months immediately preceding the onset of insolvency;

(c) at a time between the making of an administration application in respect of the company and the making of an administration order on the application; or

(d) at a time between lodgement with the Court of a copy of notice of intention to appoint an administrator under section 534 or 541 and the making of an appointment under that section.

(3) If a company enters into a transaction at an undervalue at a time referred to in subsection (1)(a), or gives a preference at a time referred to in subsection (2)(a) or (b), that time is a relevant time for the purposes of section 682 or 683 only if the company—

(a) is at that time unable to pay its debts; or

(b) becomes unable to pay its debts in consequence of the transaction or preference.

(4) In the absence of evidence to the contrary, the conditions in subsection (3) are presumed to exist if—

(a) the transaction at undervalue is entered into with; or

(b) the preference is given to,

a person who is connected with the company.

(5) For the purposes of subsections (1) and (2), the onset of insolvency is—

(a) if section 682 or 683 applies because an administrator of a company has been appointed by an administration order—the date on which the administration application is made;

(b) if section 682 or 683 applies because an administrator of a company is appointed under section 534 or 541 following lodging with the Court of a copy of a notice of intention to appoint under that section—the date on which the copy of the notice is lodged;

(c) if section 682 or 683 applies because an administrator of a company is appointed otherwise than as referred to in paragraph (a) or (b)—the date on which the appointment takes effect;

(d) if section 682 or 683 applies because a liquidator is appointed in respect of the company, either following conversion of administration into liquidation or at the time when the appointment of an administrator ends—the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was lodged); and

(e) if section 682 or 683 applies because a liquidator is appointed in respect of the company—the date of the commencement of the liquidation.

685. Orders under sections 682 and 683: ancillary provisions

(1) An order under section 682 or 683 with respect to a transaction or preference entered into or given by a company may, subject to subsection (2)—

(a) require property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;

(b) require the property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the company;

(d) require any person to pay, in respect of benefits received from the company, such amounts to the relevant office-holder as the Court may specify;

(e) provide for any surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be subject to such new or revived obligations to the person as the Court considers appropriate;

(f) provide—

(i) for security to be provided for the discharge of an obligation imposed by or arising under the order;

(ii) for such an obligation to be charged or secured on specified property; and

(iii) for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which a person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the liquidation of the company for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(3) An order under section 682 or 683 may affect the property of, or impose an obligation on, a person whether or not the person is the one with whom the relevant company entered into the transaction, or the person to whom the preference was given.

(4) In making such an order, the Court shall ensure that the order—

(a) does not detrimentally affect an interest in property that—

(i) was acquired from a person other than the company; and

(ii) was acquired in good faith and for value,

or detrimentally affect any interest that is derived from such an interest; and

(b) does not require a person who received a benefit from the transaction or preference in good faith and for value to pay an amount to the relevant office-holder, unless—

(i) the person was a party to the transaction; or

(ii) the payment is to be in respect of a preference given to that person at a time when the person was a creditor of the company.

(5) If a person has acquired an interest in property from a person other than the relevant company, or has received a benefit from the transaction or preference and, at the time of the acquisition or receipt, the person—

(a) had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(b) was connected with, or was an associate of, either the relevant company or the person with whom that company entered into the transaction or to whom that company gave the preference,

the interest is, for the purposes of paragraph (a) or paragraph (b) of subsection (4), presumed to have been acquired, or the benefit to have been received, otherwise than in good faith.

(6) For the purposes of subsection (5)(a), the relevant surrounding circumstances, in relation to a company, are—

(a) the fact that the company entered into the transaction at an undervalue; or

(b) the circumstances that amounted to the giving of the preference by that company, and subsections (7) to (9) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(7) If section 682 or 683 applies because a company has entered administration, a person has notice of the relevant proceedings if the person has notice that—

(a) an administration application has been made;

(b) an administration order has been made;

(c) a copy of a notice of intention to appoint an administrator under section 534 or 541 has been lodged with the Court; or

(d) notice of the appointment of an administrator has been lodged under section 537 or 548.

(8) If section 683 or 684 applies because a liquidator had been appointed in respect of the company at the time when the appointment of an administrator of the company ended, a person has notice of the relevant proceedings if the person has notice that—

(a) an administration application has been made;

(b) an administration order has been made;

(c) a copy of a notice of intention to appoint an administrator under section 534 has been lodged with the Court;

(d) notice of the appointment of an administrator has been lodged under section 537 or 548; or

(e) the company is in liquidation.

(a) in a case where a liquidation order has been made in respect of the company —

(a) in a case where a liquidation order has been made in respect of the company—

(i) of the fact that an application for the appointment of the liquidator was made; or

(ii) of the fact that the company is in liquidation; and

(b) in any other case-of the fact that the company is in liquidation.

(10) Nothing in this section or sections 682 to 684 affects the availability of any other remedy, even in relation to a transaction or preference that the company had no power to enter into or give.

(11) Nothing in subsection (1) limits the Court's powers under sections 682(4) and 683(3).

[Act No. 13 of 2017, Sch.]

686. Power of the Court to set aside certain extortionate credit transactions

(1) This section applies to a transaction to which a company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The relevant office-holder may apply to the Court for an order under subsection (3) if of the view that such a transaction—

(a) is or was extortionate; and

(b) was entered into during the three years immediately preceding the date on which the company entered administration or on which a liquidator was appointed in respect of the company.

(3) If, on the hearing of an application made under subsection (2), the Court is satisfied that the transaction is or was extortionate and was entered into within the period referred to in paragraph (b) of that subsection, it shall make one or more of the following orders:

(a) an order setting aside the whole or part of an obligation created by the transaction;

(b) an order otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) an order requiring a person who is or was a party to the transaction to pay to the relevant office-holder any amounts paid to that person by the company in accordance with the transaction;

(d) an order requiring a person to surrender to the office-holder property held by the person as security for the purposes of the transaction;

(e) an order directing accounts to be taken between specified persons.

(4) For the purposes of this section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(5) A transaction with respect to which an application is made under subsection (2) is, in the absence of evidence to the contrary, presumed to be or to have been extortionate.

(6) The powers conferred by this section are exercisable in relation to a transaction concurrently with any powers exercisable in relation to the transaction as one at an undervalue.

687. Circumstances in which floating charge on company's undertaking or property to be invalid

(1) Except as otherwise provided by this section, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

(a) an amount equal to the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;

(b) an amount equal to the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and

(c) the amount of such interest (if any) as is payable on the amount referred to in paragraph (a) or (b) in accordance with an agreement

under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(2) Subject to subsection (3), the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—

(a) in the case of a charge which is created in favour of a person who is connected with the company—within the two years immediately preceding the onset of insolvency;

(b) in the case of a charge that is created in favour of any other person—at a time within the twelve months ending with the onset of insolvency;

(c) in either case—at a time between the making of an administration application in respect of the company and the making of an administration order on that application; or

(d) in either case—at a time between lodging with the Court of a copy of notice of intention to appoint an administrator under section 534 or 541 and the making of an appointment under that section.

(3) If a company creates a floating charge at a time referred to in subsection (2)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—

(a) is at that time unable to pay its debts; or

(b) becomes unable to pay its debts in consequence of the transaction under which the charge is created.

(4) For the purposes of subsection (3), the onset of insolvency is—

(a) if this section applies because an administrator of a company is appointed by an administration order—the date on which the administration application is made;

(b) if this section applies because an administrator of a company is appointed under section 534 or 541 following lodgement with the Court of a copy of notice of intention to appoint under that section—the date on which the copy of the notice is lodged;

(c) if this section applies because an administrator of a company is appointed otherwise than as referred to in paragraph (a) or (b)—the date on which the appointment takes effect; and

(d) if this section applies because a liquidator has been appointed in respect of a company—the date of the commencement of the liquidation.

(5) For the purposes of subsection (1)(a), the value of any goods or services supplied as consideration for a floating charge is the amount in money that, at the time they were supplied, could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

688. Lien in respect of company's documents unenforceable if it would deny their possession to relevant office-holder

(1) This section applies to a company that is under administration or in liquidation.

(2) A lien or other right to retain possession of any of the documents of the company is unenforceable to the extent that its enforcement would deny possession of any of the documents to the relevant office-holder.

(3) Subsection (2) does not apply to a lien on documents that confer a title to property and are held as such.

689. Supply of utility services to companies in liquidation or under administration, etc

(1) This section applies to a company—

(a) that is under administration or in liquidation; or

(b) in respect of which a moratorium or voluntary arrangement under Part IX has effect.

(2) In this section, "relevant officer-holder", in relation to a company in respect of which a moratorium or voluntary arrangement under Part IX has effect, means the supervisor or provisional supervisor.

(3) If, after the effective date, a request is made by or with the consent of the relevant office-holder for the supply to the company of any of the supplies specified in subsection (4), the supplier—

(a) may make it a condition of the supply that that office-holder personally guarantees the payment of any charges in respect of the supply; but

(b) may not make it a condition for the supply, or take any action that has the effect of making it a condition for making the supply, that any outstanding charges in respect of a supply made to the company before the effective date have to be paid.

(4) The supplies referred to in subsection (3) are—

(a) a supply of gas by a gas supplier;

(b) a supply of electricity by an electricity supplier;

(c) a supply of water by a water supplier; and

(d) a supply of communications services by a provider of a public telecommunication or electronic communications service.

(5) For the purposes of this section, "the effective date" is whichever of the following dates is applicable to the company:

(a) the date on which the company entered administration;

(b) the date on which the liquidation of the company commenced;

(c) the date on which the moratorium or voluntary arrangement took effect.

690 Appointment of administrative receiver in respect of company prohibited

(1) In this section, "administrative receiver", in relation to a company, means—

(a) a receiver or manager of the whole (or substantially the whole) of the company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

(2) The holder of a floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(3) An appointment made in contravention of subsection (2) is void.

(4) This section does not apply to the holder of a floating charge that was created before the commencement of this section or to an appointment of an administrative receiver made before that commencement.

(5) This section applies despite any provision of an agreement or document that purports to empower a person to appoint an administrative receiver (by whatever name).

(6) This section is subject to the exceptions (if any) prescribed by the insolvency regulations for the purposes of this section.

PART XI—LEGAL PROCEEDINGS UNDER THIS ACT

Division 1 — General provisions relating to legal proceedings under the Act

691. Enforcement of company's obligations to lodge documents with, or give notice to, the Registrar of Companies

(1) If a company has failed to comply with a requirement under this Act—

(a) to lodge a document with the Registrar for registration; or

(b) to give notice to the Registrar of any matter,

the Registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the requirement.

(2) If the company fails to comply with the requirement within fourteen days after service of the notice, the Registrar, or any member or creditor of the company, may apply to the Court for an order under subsection (3).

(3) On the hearing of an application made under subsection (2), the Court shall, if satisfied the company has failed to comply with the requirement, make an order directing it do so within such period as is specified in the order.

(4) The company is entitled to be served with a copy of the application and to appear and be heard at the hearing of the application as respondent.

(5) The Court's order may provide that all costs of or incidental to the application are to be borne by the company or by any of its officers who are responsible for the failure.

(6) This section does not affect the operation of any other enactment that provides for penalties to be imposed on a company or its officers for such a failure.

692. Power of the Court to grant injunctions in certain cases

(1) The Official Receiver, or a person who claims to have been, to be or to be about to be adversely affected—

(a) by the past or continuing conduct of, or by a threat to engage in conduct made by, a person referred to in subsection (2); or

(b) by the past or continuing refusal or failure, or by a threatened refusal or failure, of a person do an act or thing that the person is required by this Act to do,

may apply to the Court to grant an injunction under subsection (2) or (3).

(2) If, on the hearing of an application under subsection (1), the Court is satisfied that a person has engaged, is engaging or has threatened to engage in conduct that constituted, constitutes or would constitute—

(a) a contravention of, or a failure to comply with, this Act;

(b) attempting to contravene, or fail to comply with, this Act;

(c) aiding, abetting, counselling or procuring a person to contravene, or fail to comply with, this Act;

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene or fail to comply with this Act;

(e) being in any way (directly or indirectly) knowingly concerned in, or party to, a contravention of, or a failure to comply with, this Act by another person; or

(f) conspiring with other persons to contravene or fail to comply with this Act,

the Court may grant an injunction, on such terms as it considers just, restraining the person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any specified act or thing.

(3) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on hearing of an application under subsection (1), grant an injunction, on such terms as the Court considers appropriate, requiring the person to do that act or thing.

(4) If, it seems to the Court desirable to do so, it may grant an interim injunction pending determination of an application made under subsection (1).

(5) The Court may at any time discharge or vary an injunction granted under subsection (2), (3) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial loss or damage to any other person if the person refuses or fails to do that act or thing.

(8) The Court may not require an applicant under this section or any other person to give an undertaking as to damages as a condition of granting an interim injunction.

(9) In dealing with an application under this section for the grant of an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or instead of, granting

an injunction, order that person to pay damages to the applicant or to any other person.

(10) Subsection (9) applies to an application made by the Official Receiver only if, and to the extent that, the Official Receiver has made the application for the benefit of another person who has sustained loss or damage in consequence of the conduct, or the refusal or failure, of the person to do the particular act or thing concerned.

693. Liability of officers who are in default

(1) If a provision of this Act provides that an officer of a company who is in default commits an offence, the officer commits the offence only if the officer—

(a) authorises or permits;

(b) participates in; or

(c) fails to take all reasonable steps to prevent,

the contravention of the act or conduct, or the failure to comply with the requirement, that constitutes the offence.

(2) If a company is an officer of another company, the first-mentioned company commits an offence as an officer in default only if at least one of its officers is in default.

(3) If a company that is an officer of another company commits an offence because of subsection (2), the officer in default also commits the offence and is liable to be proceeded against and punished accordingly.

694. Offences by bodies corporate

(1) If—

(a) a body corporate commits an offence to which this section applies; and

(b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate or any person purporting to act as such,

the officer or person also commits an offence and is liable to be prosecuted for that offence and, if found guilty, to be punished for it to the same extent as the body corporate.

(2) An officer of a body corporate, or a person purporting to act as such an officer, may be prosecuted for an offence under subsection (1) even if the body corporate is not prosecuted for the offence from which that offence is derived.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with the member's management functions as if the member were an officer of the body corporate.

695. Admissibility in evidence of statement prepared for purpose of provision of this Act or the insolvency regulations

(1) In any proceedings (whether under this Act or any other written law)—

(a) a statement of the financial position or affairs of a bankrupt, company or other person prepared for the purpose of any provision of this Act; and

(b) any other statement made for the purpose of complying with a requirement imposed by or under any such provision or by or under the insolvency regulations,

may be used in evidence against any person making or concurring in making the statement.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—

(a) evidence relating to the statement may not be adduced, and

(b) questions relating to it may not be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to all offences other than—

(a) an offence under section 108 or 114 of the Penal Code (Cap. 63) (which respectively relate to perjury and subornation of perjury and to false swearing); and

(b) offences (if any) designated by the insolvency regulations for the purposes of this section.

696. Legal proceeding under this Act not to be invalidated or set because of a defect unless person detrimentally affected

(1) A proceeding under this Act may not be invalidated or set aside for a defect in a step that is required to be taken as part of, or in connection with, the proceeding, unless a person is detrimentally affected by the defect.

(2) The Court may order the defect to be corrected, and may order the proceeding to continue, on such terms as it considers appropriate in the interests of everyone who has an interest in the proceeding.

(3) In this section, "defect" includes a misdescription, misnomer or omission.

697. Power to make insolvency procedure rules

(1) The Rules Committee, with the addition of the Official Receiver, may make rules providing for either or both of the following:

(a) the procedure of the Court under this Act;

(b) appeals to the Court of Appeal from decisions of the Court under this Act.

(2) Matters that may be dealt with by the rules include the following:

(a) how proceedings may be commenced;

(b) where proceedings may be commenced;

(c) the forms to be used in proceedings;

(d) the service or issue of documents relating to proceedings;

(e) the amendment of defects and errors in proceedings;

(f) how evidence may be given in proceedings;

(g) how the identity of persons who are parties to, or involved in, proceedings can be proved;

(h) how witnesses in the proceedings are summoned and documents served or issued in the proceedings may be discovered;

(i) the right of creditors and other persons to appear in proceedings, and the procedure to be followed in the absence of creditors or other persons;

(j) the notices required to be given in connection with proceedings, and who may give them and to whom;

(k) the manner of advertising proceedings;

(l) the consolidation of proceedings;

(m) the substitution of parties to proceedings;

(n) authorising the continuation of proceedings after the death of a debtor who is a party to proceedings;

(o) authorising proceedings to be begun against one or more partners of a business partnership without including the others, and providing for the disclosure of the other partners;

(p) the scale of costs of advocates and others in proceedings;

(q) the award of costs and when security for costs has to be given;

(r) the execution of processes and the enforcement of orders under this Act;

(s) the deadline for appealing to the Court of Appeal and how the appeal may be brought.

Division 2 — Appeals and reviews, etc

698. Power of the Court to review, rescind or vary order made under this Act

The Court may review, rescind, or vary any order of the Court under this Act.

699. Right of appeal to Court of Appeal

(1) Any person dissatisfied with a decision of the Court under this Act may appeal to the Court of Appeal against the decision.

(2) Except as otherwise expressly provided by this Act, a notice of appeal does not stay proceedings under the decision under appeal unless the Court or the Court of Appeal makes an order staying the proceedings.

700. Suspension of bankruptcy, liquidation or administration pending determination of appeal

(1) If an appeal has been lodged against a bankruptcy order or an order for the liquidation or administration of a company, any interested person may apply to the Court or the Court of Appeal for an order suspending the order until the appeal is decided.

(2) The Court or Court of Appeal may suspend the order on such terms as it considers appropriate, including terms as to anything done or decided, or that ought to have been done or decided, by any person in the period between the order and the order suspending it.

(3) The Court or the Court of Appeal may, at any time, make such order as it considers appropriate to deal with anything done, or any matter decided, or that should have been done or decided, by any person during the period between the commencement of the bankruptcy, liquidation or administration and the date when the appeal is decided if—

(a) the bankruptcy, liquidation or administration order has been suspended and the appeal fails; or

(b) the bankruptcy order, liquidation order or administration order has not been suspended and the appeal succeeds.

PART XII — ADMINISTRATION OF THIS ACT

Division 1 — Official Receiver and Deputy Official Receivers

701. Appointment of Official Receiver and others

(1) The Cabinet Secretary shall, as and when necessary, appoint suitably qualified persons to the positions of—

(a) Official Receiver; and

(b) one or more Deputy Official Receivers.

(2) The Official Receiver and the Deputy Official Receivers are officers of the Court.

(3) In performing their duties and exercising their powers, the Deputy Official Receivers are subject to the control and direction of the Official Receiver.

(4) Subject to this Act, the Official Receiver holds office for such period, not exceeding seven years, as is specified in the document of his or her appointment and is eligible for re-appointment.

(5) A person is not qualified for appointment as Official Receiver or Deputy Official Receiver unless the person is an advocate, a registered accountant or a chartered public secretary.

(6) A person is not eligible for appointment as Official Receiver or Deputy Official Receiver if—

(a) the person—

(i) is an undischarged bankrupt or has entered into a deed of composition under Division 24 of Part III;

(ii) has entered into a voluntary arrangement under Division 1 of Part IV that has not ended;

(iii) is subject to a summary instalment order imposed under Division 2 of that Part;

(iv) is subject to the no-assets procedure under Division 3 of that Part; or

(v) is subject to an order disqualifying the person from being a director of a company;

(b) is convicted of offence punishable by imprisonment for a term of two years or more;

(c) is a member of the Parliament.

(7) The Official Receiver and a Deputy Official Receiver are entitled to such remuneration and benefits as may be determined by the Salaries and Remuneration Commission from time to time.

(8) A person holding office as Official Receiver or Deputy Official Receiver immediately before the commencement of this Division continues to hold that office under this Act on the same terms as those subject to which the person held the office immediately before that commencement.

702. Deputy Official Receiver may act on behalf of Official Receiver

A Deputy Official Receiver may act for, or in the place of, the Official Receiver or another Deputy Official Receiver, and in that capacity has all the authority and powers of the Official Receiver or Deputy Official Receiver for whom, or in whose place, he or she acts.

703. Incorporation of Official Receiver as a corporation sole

(1) The Official Receiver is, for the purpose of performing the functions imposed and exercising the powers to be conferred on the Official Receiver by or under this or any other Act, incorporated as a corporation sole with the corporate name "Official Receiver in Insolvency".

(2) As a corporation sole, the Official Receiver—

(a) has perpetual succession;

(b) is required to have an official seal;

(c) may bring proceedings, and be proceeded against in the Official Receiver's corporate name;

(d) subject to this Act, may acquire, hold and dispose of and otherwise deal with real and personal property;

(e) may do and be subjected to all other things that a body corporate may, by law, do and be subjected to and that are necessary for or incidental to the performance of the Official Receiver's functions.

(3) The Official Receiver may not employ staff, but the Cabinet Secretary may, subject to the approval of the National Treasury as to numbers and remuneration, appoint public officers to assist the Official Receiver and Deputy Official Receiver in performing their functions.

(4) All courts and persons acting judicially:

(a) shall take judicial notice of the seal of the corporation sole that has been affixed to any instrument or document; and

(b) shall, in the absence of evidence to the contrary, presume that the seal was properly affixed.

(5) The Official Receiver may—

(a) administer oaths and take statutory declarations; and

(b) appear in relevant legal proceedings and conduct examinations of persons in the course of those proceedings.

704. Vacation of office by Official Receiver and Deputy Official Receiver

(1) The office of Official Receiver or Deputy Official Receiver becomes vacant if—

(a) the person dies;

(b) the person's term of office expires without the person being reappointed;

(c) the person resigns the office by letter in writing addressed to the Cabinet Secretary and the Cabinet Secretary accepts the resignation;

(d) a bankruptcy order is made in respect of the person, the person enters into a voluntary arrangement under Division 1 of Part IV, or the person becomes subject to a summary instalment order or the no-assets procedure, under that Part, or becomes subject to an order disqualifying the person from holding office as a director of a company or a partner of a limited liability partnership;

(e) the person is convicted of offence punishable by imprisonment for a term of two years or more;

(f) the person is nominated for election as a member of the Parliament;

(g) the person engages in any paid employment outside the duties of the office; or

(h) the person is removed from office under subsection (2).

(2) The Cabinet Secretary may remove from office a person holding the office of Official Receiver or Deputy Official Receiver if satisfied on reasonable grounds that the person is not or is no longer competent to perform the functions of that office or is guilty of misconduct in performing those functions.

(3) The Cabinet Secretary may exercise the power conferred by subsection (2) only after giving the person an opportunity to be heard and to make representations on the matter.

(4) As soon as practicable after a vacancy occurs in the office of Official Receiver or Deputy Official Receiver, the Cabinet Secretary shall appoint a suitably qualified person to fill the vacancy.

705. Protection of Official Receiver and Deputy Official Receivers from liability

Neither the Official Receiver nor a Deputy Official Receiver is liable in civil proceedings for any act that the Official Receiver or Deputy Official Receiver has done or omitted to do for the purpose of performing or exercising in good faith any function or power imposed or conferred on the Official Receiver or a Deputy Official Receiver by or under this Act or any other written law.

706. Official Receiver and Deputy Official Receivers may charge fees

(1) The Official Receiver and Deputy Official Receivers may charge fees for performing their official functions, and exercising their official powers, at the rates (if any) prescribed by the insolvency regulations.

(2) The Official Receiver shall ensure that all fees charged under subsection (1) that are paid to or recovered by the Official Receiver or a Deputy Official Receiver are paid into the Insolvency Services Account.

707. Rates of Official Receiver's fees

(1) The insolvency regulations may fix or prescribe the amount or rates of fees chargeable under section 706.

(2) Those regulations may, for example, prescribe—

(a) hourly or other rates;

(b) different rates for work done in the bankruptcy by different classes of persons;

(c) rates by reference to the net value of the assets realised by the Official Receiver together with other amounts as may be specified;

(d) rates for the performance of particular functions or the exercise of particular powers;

(e) rates by reference to any other criteria that may be specified.

708. Insolvency Services Account to be established and maintained

(1) The Official Receiver shall establish in the Central Bank of Kenya an account, to be called the "Insolvency Services Account".

(2) The Official Receiver shall pay into the Insolvency Services Account all money received or recovered by the Official Receiver in the performance and exercise of the Official Receiver's functions and powers under this Act.

(3) There is payable from the Insolvency Services Account any money due to creditors and contributories under this Act that the Official Receiver has received or recovered in the course of performing or exercising the Official Receiver's functions and powers under this Act.

(4) Any money held in the Insolvency Services Account that is not immediately required for the purposes of making payments under subsection (3) may be invested in any investments in which a trustee can invest money in accordance with the Trustee Act.

709. Official Receiver to pay certain unclaimed dividends and undistributed balances into Insolvency Services Account

The Official Receiver shall from time to time pay into the Consolidated Fund out of the Insolvency Services Account so much of the amounts standing to the credit of that Account as represents—

(a) dividends which were declared before such date as the National Treasury may from time to time determine and have not been claimed; and

(b) balances ascertained before that date that are too small to be divided among the persons that may otherwise be entitled to them.

Division 2 — Public registers relating to bankrupts and others

710. Application of Division 2

This Division applies to a public register established under section 47, 337 or 350.

711. Official Receiver to ensure access to public registers

(1) The Official Receiver shall ensure that all public registers are available for access and inspection by members of the public during the Official Receiver's ordinary business hours.

(2) However, the Official Receiver may refuse access to a public register or suspend the operation of a public register, wholly or partly—

(a) if the Official Receiver considers that it is not practical to provide access to the register; or

(b) for any other reason that is prescribed by the insolvency regulations for the purposes of this section.

712. Purposes of public registers

(1) The public register kept under section 47 has—

(a) the purpose of providing information about bankrupts and discharged bankrupts; and

(b) the further purposes specified in subsection (4).

(2) The public register kept under section 336 has—

(a) the purpose of providing information about persons subject to a current summary instalment order; and

(b) the further purposes set out in subsection (4).

(3) The public register kept under section 349 has—

(a) the purpose of providing information about persons currently admitted to the no asset procedure and persons discharged from that procedure under section 358; and

(b) the further purposes set out in subsection (4).

(4) The further purposes of the public registers are—

(a) to facilitate the compliance, audit, and other supporting and administrative functions of the Official Receiver, the Cabinet Secretary, the Court or any other person under this Act or any other written law;

(b) to facilitate the enforcement functions and the exercise of the powers of the Official Receiver, the Cabinet Secretary, the Court, or any other person under this Act or any other enactment; and

(c) to provide statistical information and information for research purposes in relation to bankruptcy, summary instalment orders and the no asset procedure.

713. General information to be included in public registers

(1) The Official Receiver shall ensure that the public registers contain the prescribed information in respect of the following persons:

(a) a person who is or has been bankrupt;

(b) a person who is subject to a current summary instalment order;

(c) a person who is currently admitted to the no asset procedure, or who has been discharged from that procedure under section 358.

(2) The prescribed information for the purposes of subsection (1) is the following:

(a) the person's full name;

(b) whether the person—

(i) is currently bankrupt, or has been discharged from bankruptcy;

(ii) is subject to a current summary instalment order; or

(iii) is currently admitted to the no asset procedure, or has been discharged from the no asset procedure under section 358;

(c) the bankruptcy, summary instalment order, or no asset procedure number (if any);

(d) the person's address as contained in—

(i) a statement of the person's financial position;

(ii) an application for a bankruptcy order in respect of the person;

(iii) an application for a summary instalment order in respect of the person; or

(iv) an application by the person for admission to the no asset procedure;

(e) if the person has notified the Official Receiver of a change of address —that address;

(f) if the person has been adjudged bankrupt on a creditor's application —the person's address as contained in the application;

(g) the person's occupation and current employment status, if known;

(h) if a bankruptcy order has been made in respect of the person—the time and date of the on which the order was made;

(i) if the person is admitted to the no asset procedure—the date of that admission;

(j) if the person is discharged from the no asset procedure under section 358—the date when the person was so discharged;

(k) if the person is a discharged bankrupt—the date, type, and conditions (if any) of discharge;

(l) if the bankruptcy has been annulled—the provision of this Act under which it was annulled;

(m) if the Court has refused to discharge the person from bankruptcy—details of the refusal;

(n) if the Court has suspended the person's discharge from bankruptcy —details of the suspension;

(o) in the case of a person subject to a current summary instalment order —the full name and business postal address of the supervisor;

(p) any other information or documents prescribed by the insolvency regulations for the purposes of this section.

(3) Subject to sections 711(2) and 716(1), the Official Receiver shall ensure that information kept in a public register is readily available for inspection by members of the public during the Official Receiver's ordinary business hours.

(4) The Official Receiver shall ensure that a public register does not contain information relating to a person whose bankruptcy was annulled under section 271(2)(a) or 272(2)(a), and the bankruptcy that was so annulled does not count for the purposes of section 714.

(5) The Official Receiver shall ensure that all information relating to a person who has been adjudged bankrupt and discharged from bankruptcy is removed from the public register kept under section 47 as soon as practicable after—

(a) the expiry of four years after the date of discharge; but

(b) in the case of a conditional discharge—the expiry of four years after the discharge becomes unconditional.

(6) The Official Receiver shall ensure that all information relating to a person who has been admitted to the no-asset procedure is removed from the public register kept under section 349 as soon as practicable after—

(a) the expiry of four years after the date of discharge under section 358; or

(b) the person's participation in the procedure is terminated in accordance with section 353(a), (c) or (d).

(7) The Official Receiver shall ensure that all information relating to a person who has been adjudged bankrupt but whose bankruptcy has been annulled under section 271(2)(b) or (c) or section 272(2)(b) or (c) is removed from the public register kept under section 47 as soon as practicable after the expiry of seven years from the commencement of the bankruptcy.

714. Information kept indefinitely on public register after multiple insolvency events

(1) This section applies to a person who—

(a) is or has been bankrupt on two or more occasions; or

(b) is or has been both bankrupt and discharged from the no asset procedure under section 358.

(2) The Official Receiver shall ensure that information about a person to whom this section applies is not removed from a public register kept under this Act.

(3) Section 713 (4), (5) and (6) do not apply to such a person.

(4) The Official Receiver shall ensure that the relevant public register contains all of the information required by this Act about such a person and each insolvency event.

(5) A bankruptcy under the repealed Bankruptcy Act (Cap. 53) counts for the purposes of subsections (2) and (4).

715. Restricted information that may be included in public register relating to bankruptcies

(1) The public register kept under section 47 may contain any or all of the documents set out in section 101 in respect of a bankrupt or former bankrupt.

(2) The Official Receiver shall ensure that a person only has access to the documents contained in the public register under subsection (1) in respect of a bankrupt or former bankrupt if the person would be entitled to inspect those documents under section 101.

716. When Official Receiver may omit, remove, restrict access to, or amend, information contained in a public register

(1) The Official Receiver may omit, remove, or restrict access to information contained in a public register in respect of a person if the Official Receiver considers that the disclosure of the information via the public register would be prejudicial to the person's safety or welfare or the safety or welfare of the person's family.

(2) The Official Receiver may amend the information contained in a public register in order to update the information or correct any error in, or omission from, the information.

(3) The Official Receiver may refuse to provide access to any information in a public register if, in the Official Receiver's opinion, it is impractical to provide the volume of information requested.

717. Right of members of public to inspect registers

(1) A person may inspect the public registers only in accordance with this Act and such provisions (if any) of the insolvency regulations as relate to the inspection of the public registers.

(2) The public registers relating to bankruptcies, summary instalment orders or the no-asset procedure may be searched only by reference to the following criteria:

(a) the bankruptcy number, summary instalment order or no asset procedure number;

(b) the name, or any part of the name of a person;

(c) insolvency status;

(d) the date of the relevant bankruptcy order, summary instalment order, admission to the no asset procedure, or discharge;

(e) any combination of the criteria in paragraphs (a) to (e);

(f) any other criteria prescribed by the insolvency regulations.

(3) In subsection (2)(c), insolvency status means that a person—

(a) is currently bankrupt;

(b) is subject to a current summary instalment order;

(c) is currently admitted to the no asset procedure;

(d) is a discharged bankrupt;

(e) is discharged from the no asset procedure in accordance with section 358;

(f) is a discharged bankrupt who is subject to conditions of discharge;

(g) has been subject to a bankruptcy order but the order has been annulled under section 271(2)(a) or 272(2)(a);

(h) has been subject to a bankruptcy order but the order has been annulled under section 271(2)(b) or (c) or 272(2)(b) or (c); or

(i) is subject to section 718 (which relates to permanent retention of information on the register after multiple insolvency events).

(4) The public registers may be inspected—

(a) by a person, or by another person with the consent of that person, for the purpose of searching for information about that person;

(b) by a person for the purpose of ascertaining whether another person is bankrupt, is a discharged bankrupt, is subject to a current summary instalment order, is currently admitted to the no asset procedure, or is discharged from that procedure under section 358;

(c) by a person for any purpose related to—

(i) the bankruptcy of a person;

(ii) the making of a current summary instalment order in respect of a person; or

(iii) the admission of a person to the no asset procedure;

(d) by a person for any of the purposes specified in section 713(4)(a) or (b); or

(e) by a person for the purpose of ascertaining whether section 714 applies to another person.

718. Information contained in public registers may be used for statistical or research purposes

Nothing in this Division prevents the use of information contained in the public registers for statistical or research purposes if the information—

(a) does not identify anyone; and

(b) is not published in any form that could reasonably be expected to identify anyone.

719. Government and Official Receiver not liable for certain acts and omissions

Neither the Government nor the Official Receiver may be sued for any act or omission in relation to the maintenance of a public register under this Division done or omitted to be done in good faith and with reasonable care.

PART XIII — SUPPLEMENTARY PROVISIONS

720. Cross border insolvency

The United Nations Commission on International Trade Law (Model Law on Cross-Border Insolvency) has the force of law in Kenya in the form set out in the Fifth Schedule.

721. Representation of bodies corporate at meetings

(1) A body corporate that is a creditor or debenture-holder may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—

(a) at any meeting of the creditors of a company held in accordance with this Act or of the insolvency regulations; or

(b) at any meeting of a company held in accordance with the provisions contained in a debenture or trust deed.

(2) If the body corporate authorises only one person, that person is entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a creditor or debenture-holder who is a natural person.

(3) If the body corporate authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a creditor or debenture-holder who is a natural person.

(4) If the body corporate authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

(a) if they purport to exercise the power in the same way—the power is treated as exercised in that way; but

(b) if they do not purport to exercise the power in the same way—the power is taken to have not been exercised.

722. Courts, Official Receiver and others to publish orders and notices on their respective websites

(1) As soon as practicable after the Court has made an order under a provision of this Act, the Registrar of the Court shall publish on the Court's website a copy of the order or a summary of its contents sufficient to inform creditors and other interested persons of the effect of the order.

(2) If the Official Receiver, an interim trustee or a bankruptcy trustee is required to publish a notice under a provision of this Act or takes a prescribed step in the bankruptcy process relating a bankrupt, the Official Receiver, interim trustee or bankruptcy trustee shall publish a copy of the notice, or the prescribed details of the step taken, on the website of the Official Receiver, interim trustee or bankruptcy trustee.

(3) If a liquidator or provisional liquidator is required to publish a notice under a provision of this Act or takes a prescribed step in the liquidation process relating a company that is in liquidation, the liquidator or provisional liquidator shall publish a copy of the notice, or the prescribed details of the step taken, on the website of the liquidator or provisional liquidator.

(4) If an administrator is required to publish a notice under a provision of this Act or takes a prescribed step in the administration process relating a company that is under administration, the administrator shall publish a copy of the notice, or the prescribed details of the step taken, on the website of the administrator.

(5) In this section, "prescribed step" means a step prescribed by the insolvency regulations for the purposes of this section.

723. Official Receiver, bankruptcy trustees, liquidators and administrators to notify creditors of prescribed steps in the insolvency process

(1) If an interim trustee or bankruptcy trustee takes a prescribed step in the bankruptcy process relating a bankrupt, that trustee shall, by notice, give to all creditors of the bankrupt of whom that trustee is aware the prescribed details of the step taken.

(2) If a liquidator or provisional liquidator takes a prescribed step in the liquidation process relating a company that is in liquidation, the liquidator or provisional liquidator shall, by notice, give to all creditors of the company of whom the liquidator or provisional liquidator is aware the prescribed details of the step taken.

(3) If an administrator takes a prescribed step in the administration process relating a company that is under administration, the administrator shall give, by notice, give to all creditors of the company of whom the administrator is aware the prescribed details of the step taken.

(4) A bankruptcy trustee, liquidator, provisional liquidator or administrator who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(5) In this section, "prescribed step" and "prescribed details" means a step or details prescribed by the insolvency regulations for the purposes of this section.

724. Certain transactions relating to bankrupt's estate exempt from stamp duty

Stamp duty is not payable in respect of—

(a) any transfer or other document relating solely to property that is comprised in a bankrupt's estate and that, after the execution of that document, is or remains at law or in equity the property of the bankrupt or of the bankruptcy trustee in respect of that estate; or

(b) any writ, order, certificate or other instrument relating solely to the property of a bankrupt or to any bankruptcy proceedings.

725. Re-direction of bankrupt's correspondence

(1) If a bankruptcy order has been made, the Court may, from time to time, on the application of the Official Receiver or of the bankruptcy trustee in respect of the bankrupt's estate, order Posta Kenya to re-direct and send or deliver to the Official Receiver or bankruptcy trustee or otherwise any letter or postal packet that would otherwise be sent or delivered by Posta Kenya to the bankrupt at such place or places as may be specified in the order.

(2) An order under this section has effect for such period, not exceeding three months, as may be specified in the order.

726. Supply of utility services to bankrupts and others

(1) In this section—

(a) "communications services" do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services; and

(b) "the relevant office-holder" means the Official Receiver, the bankruptcy trustee, the interim trustee or the supervisor of the voluntary arrangement, whichever is applicable.

(2) This section applies to a person if—

(a) a bankruptcy order is made in respect of the person, or an interim trustee is appointed in respect of a person's property;

(b) the person is a bankrupt and a deed of composition proposed by the person is approved under Division 24 of Part III; or

(c) a voluntary arrangement proposed by the person is approved under Division 1 of Part IV.

(3) For the purposes of this section, the effective date is—

(a) in the case of a person referred to in subsection (2)(a)—the date of the order or appointment;

(b) in the case of a bankrupt referred to in subsection (2)(b)—the date on which the deed is approved; and

(c) in the case of person referred to in subsection (2)—the date on which the arrangement is approved.

(4) If, after the effective date, a complying request is made for the supply to a person or bankrupt referred to in subsection (2) of any of the supplies specified in subsection (6), the supplier—

(a) may make it a condition of the supply that the relevant office-holder personally guarantees payment for the supply; but

(b) may not make it a condition of the supply, or do anything that has the effect of making it a condition of the supply, that any outstanding amount due in respect of a supply made to the person or bankrupt before the relevant date is paid.

(5) For the purpose of subsection (4), a request is a complying request if it is made—

(a) by or with the agreement of the relevant office-holder; and

(b) for the purposes of a business that is or has been carried on—

(i) by the person or bankrupt;

(ii) by a partnership of which the person or bankrupt is or was a member; or

(iii) by an agent or manager for the person or bankrupt, or for such a partnership.

(6) The supplies referred to in subsection (4) are—

(a) a supply of electricity by an electricity supplier;

(b) a supply of water by a water supplier; and

(c) a supply of communications services by a provider of a public electronic communications service.

727. Order for production of documents by Kenya Revenue Authority

(1) For the purposes of any proceedings against a debtor or bankrupt under Part III (including a public examination of a bankrupt), the Court may, on the application of the Official Receiver or the bankruptcy trustee in respect of the bankrupt's estate, order the Kenya Revenue Authority to produce to the Court—

(a) any return, account or financial statement submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to that Authority;

(b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by that Authority; or

(c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and that Authority.

(2) If the Court has made an order under subsection (1) for the purposes of any examination or proceedings, the Court may, at any time after the document to which the order relates is produced to it, make an order authorising the disclosure of the document, or of any part of its contents.

728. Cabinet Secretary to prepare annual report

Not later than three months after the end of 2015 and each subsequent calendar year, the Cabinet Secretary shall prepare a report about the operation of this Act during that year and arrange for a copy of the report to be laid before each House of Parliament.

729. Service of documents, etc. for the purposes of this Act

(1) A document that is required or permitted by or under this Act to be served on, or given to, a natural person may be served on, or given to, the person personally or by means of a letter addressed to the person at the person's address last known to the server or giver of the document.

(2) A document that is required or permitted by or under this Act to be served on, or given to, a partnership, trust or other unincorporated body of natural persons may be served on, or given to, any member of the partnership, trust or group personally or by means of a letter addressed to the partnership, trust or body at its address last known to the server or giver of the document.

(3) The provisions of the Companies Act, 2015 on the service of documents on and by companies apply to a document that is required or permitted by or under this Act to be served on or by, or given to or by a company.

730. Power of Cabinet Secretary to make insolvency regulations for the purposes of this Act

(1) The Cabinet Secretary may make insolvency regulations prescribing matters—

(a) required or permitted by this Act to be prescribed by insolvency regulations; or

(b) necessary or convenient to be so prescribed for carrying out or giving full effect to this Act.

(2) In particular, the Cabinet Secretary may make insolvency regulations that specifically relate to—

(a) natural persons who are insolvent;

(b) companies and other bodies corporate that are insolvent;

(c) partnerships and other unincorporated bodies that are insolvent;

(d) the administration of the insolvent estates of deceased persons;

(e) the functions of authorised insolvency practitioners, the manner in which they are required to conduct their practice and a scale of remuneration including expenses chargeable against debtors' assets.

(3) Without limiting subsections (1) and (2), the insolvency regulations may make provision for all or any of the following matters:

(a) prescribing forms for the purposes of this Act and the method of verifying any information required by or in those forms;

(b) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, are required or permitted to be signed, prepared or completed, and generally regulating the signing, preparation and completion of those forms, or any of them;

(c) prescribing fees payable under this Act;

(d) prescribing how and when the debts and claims of creditors are to be made and proved, and when a debt or claim may be allowed or disallowed;

(e) providing for the public examination of bankrupts;

(f) prescribing the expenses that may be paid to a bankrupt, or any other person, who is required to attend any examination by the Official Receiver or a bankruptcy trustee;

(g) prescribing the steps that an undischarged bankrupt has to follow to obtain consent to leaving Kenya and the circumstances in which, and the conditions on which, that consent may be given;

(h) for or in relation to the convening of, conduct of, and procedure and voting at—

(i) meetings of creditors and members of companies that are in liquidation or under administration;

(ii) meetings of eligible employee creditors;

(iii) meetings of contributories and meetings of holders of debentures; and

(iv) joint meetings of creditors and members of companies;

(i) prescribing the number of persons required to constitute a quorum at any such meeting, providing for the sending of notices of meetings to persons entitled to attend those meetings, the lodging of copies of notices of, and of resolutions passed at, those meetings, and generally regulating the conduct of, procedure at, those meetings;

(j) providing for the appointment, retirement, removal, discharge and control of bankruptcy trustees and for the accounts that they are required to keep, and for the audit of those accounts;

(k) prescribing the form of a statement of the financial position or affairs of a bankrupt, company or other person that is required under this Act;

(l) prescribing how instalments under a summary instalment order have to be paid;

(m) prescribing the accounts that are to be kept by the Official Receiver and the audit of those accounts;

(n) providing for the giving to the Official Receiver or the Registrar information relating to matters arising in connection with an insolvency event;

(o) prescribing offences for failing to comply with a requirement of a specified regulation, or for contravening a prohibition imposed by a specified regulation, and prescribing fines that may be imposed on persons convicted of those offences not exceeding five hundred thousand shillings.

(4) The insolvency regulations may—

(a) if documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act—require that the documents or any of them be verified or certified by statement in writing made by such persons as are prescribed by those regulations; and

(b) if no express provision is made in this Act for verification or certification of documents—require that the documents be verified or certified by statement in writing by such persons as are so prescribed.

(5) Except as otherwise expressly provided in this Act, the insolvency regulations may be of general application or of a specifically limited application (for example, to companies) or may differ according to differences in time, locality, place or circumstance.

731. Act to bind the Government

This Act binds the Government.

732. Repeal of Bankruptcy Act and revocation of subsidiary legislation

(1) The provisions of the Bankruptcy Act (Cap. 53) are repealed on such date or such different dates as the Cabinet Secretary may appoint by notice published in the *Gazette*.

(2) When bringing provisions of this Act into operation by a notice made under section 1(3) of this Act, the Cabinet Secretary shall ensure—

(a) that all provisions of the Bankruptcy Act that correspond to those provisions are repealed contemporaneously by a notice published under subsection (1) of this section; and

(b) that all provisions of the Companies Act (Cap. 486) that correspond to those provisions are repealed contemporaneously by a notice published under the Companies Act, 2015.

(3) However, if the provisions of this Act that are to be brought into operation correspond to provisions of the Bankruptcy Act that are to be repealed by notice under subsection (1), the Cabinet Secretary may instead combine the repeal of those provisions of the Bankruptcy Act in the notice under section 1(3) of this Act bringing the relevant provisions of this Act into operation.

(4) Section 89 of the Law of Succession Act (Cap. 160) is repealed on the coming into operation of Part V of this Act.

(5) On the repeal of section 122 of the Bankruptcy Act, the Bankruptcy Rules are revoked.

(6) On the repeal of section 123 of the Bankruptcy Act, the Bankruptcy (Fees) Rules are revoked.

(7) On the repeal of section 164 of the Bankruptcy Act, the Bankruptcy (Reciprocity) Rules are revoked.

733. Transitional provisions: insolvency of natural persons

(1) In this section—

"the commencement" means the coming into operation of Parts III to V;

"past event" means any of the following that has occurred before the commencement:

(a) issuing a bankruptcy notice;

(b) making an application for a bankruptcy order; either by a creditor or the debtor;

(c) entering into a voluntary arrangement;

(d) making an application for a grant of probate or letters of administration in respect of an insolvent deceased's estate under section 89 of the Law of Succession Act, (Cap. 160).

(2) Despite their repeal, the Bankruptcy Act and section 89 of the Law of Succession Act continue to apply, to the exclusion of this Act, to any past event and to any step or proceeding preceding, following, or relating to that past event, even if it is a step or proceeding that is taken after the commencement.

(3) Subsection (2) has effect subject to any transitional regulations made under section 735 that relate to the insolvency of natural persons.

734. Transitional provisions: Winding up and insolvency of companies

(1) In this section—

"the commencement" means the coming into operation of Parts VI to X;

"past event" means any of the following that has occurred before the commencement:

(a) the passing by the company of a special resolution resolving that the company be wound up;

(b) the making of an application to the Court for a winding up order in respect of the company;

(c) the appointment of a liquidator or provisional liquidator in respect of the company;

(d) a failure by the company to deliver the statutory report to the Registrar or to hold the statutory meeting required under the repealed Companies Act;

(e) failure by the company to commence its business within a year from its incorporation or, if the company has suspended carrying on business, the elapse of a whole year since the business was suspended;

(f) a reduction of the number of members of the company, in the case of a private company, below two, or, in the case of any other company, below seven;

(g) the inability of the company to pay its debts;

(h) in the case of a company incorporated outside Kenya and carrying on business in Kenya—the commencement of winding-up proceedings in respect of it in the country or territory of its incorporation or in any

other country or territory in which it carries on or formerly carried on business;

(i) the appointment of a receiver of in respect of the company by the holders of the company's debentures;

(j) the appointment of a receiver and manager in respect of the property of the company.

(2) Despite the repeal of the Companies Act, or of Parts VI to IX of that Act, those Parts, and any other provisions of that Act necessary for their operation, continue to apply, to the exclusion of this Act, to any past event and to any step or proceeding preceding, following, or relating to that past event, even if it is a step or proceeding that is taken after the commencement.

(3) Subsection (2) has effect subject to any transitional regulations in force under section 736 that relate to the insolvency of companies and other bodies corporate.

735. Power of Cabinet Secretary to make savings and transitional regulations

(1) The Cabinet Secretary may make regulations containing provisions of a savings or transitional nature relating to the transition from the application of the repealed Bankruptcy Act and the relevant provisions of the repealed Companies Act to the application of this Act.

(2) Any such provision may, if those regulations so provide, take effect from the date of the passing of this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an agency of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) Without limiting subsection (1), the savings and transitional regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:

(a) by applying (with or without modification) to the matter provisions of a written law of Kenya;

(b) by otherwise specifying rules for dealing with the matter;

(c) by specifying a particular consequence of the matter, or of an outcome of the matter.

(5) In this section, matters of a savings or transitional nature include, but are not limited to, matters related to any of the following:

(a) how a matter that arose or existed under the repealed Act is to be dealt with under this Act;

(b) the significance for the purposes of this Act of a matter that arose or existed under the repealed Act;

(c) how a process started but not completed under the repealed Act is to be dealt with;

(d) the preservation of concessions or exemptions (however described) that existed under the repealed Act;

(e) any other matters that are prescribed by regulations made for the purposes of this subsection.

(6) In this section, "relevant provisions", in relation to the repealed Companies Act, means Parts VI to IX of that Act, and any other provisions of that Act necessary for the operation of those Parts,

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SCHEDULES

FIRST SCHEDULE

[Sections 63 & 65.]

POWERS OF BANKRUPTCY TRUSTEES

PART 1 — POWERS EXERCISABLE WITH APPROVAL

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the bankruptcy trustee is able to do so without contravening any requirement imposed by or under any enactment.

2. Power to bring or defend legal proceedings relating to the property comprised in the bankrupt's estate.

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate an amount of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the Court thinks fit.

4. (1) Power to borrow money for the beneficial realisation of the bankrupt's estate and to give security for the borrowing over the whole or any part of the property comprised in that estate those assets.

(2) This power may be exercised without the consent of secured creditors or preferential creditors of the bankrupt so long as—

(a) approval for the exercise of the power is supported by a majority of the creditors (in number and value) holding at least seventy-five percent in value of the total amount that is owed by the bankrupt to its creditors; and

(b) the priorities of the secured and preferential creditors are preserved in relation to the property of the bankrupt so that those creditors would be in no worse position than would be the case when the distribution of the estate is completed.

5. If any right, option or other power forms part of the bankrupt's estate, power to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property that is the subject of the right, option or power.

6. Power to refer to arbitration, or to compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred a liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be considered beneficial with creditors, or persons claiming to be creditors, in respect of the bankrupt's debts.

8. Power to make such compromise or other, arrangement as may be considered beneficial with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the bankruptcy trustee by any person or by the bankruptcy trustee on any person.

PART 2 — GENERAL POWERS

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business carried on or formerly carried on by the bankrupt.

10. Power to give receipts for any money received by bankruptcy trustee, being receipts that effectually discharge the person paying the money from all responsibility in respect of its application.

11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in the bankrupt's estate.

12. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the exercise of which is conferred on the bankruptcy trustee under Part III of this Act.

13. Power to deal with any property comprised in the bankrupt's estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

PART 3— ANCILLARY POWERS

14. For the purposes of, or in connection with, the exercise of any of the bankruptcy trustee's powers under Parts III of this Act, that trustee may as such—

(a) hold any kind of property;

(b) enter into contracts;

(c) sue and be sued;

(d) enter into engagements binding on that trustee and, in respect of the bankrupt's estate, on that trustee's successors in office;

(e) employ agents;

(f) execute powers of attorney, deeds and other documents; and

(g) do any other acts necessary or desirable for the purposes of, or in connection with, the exercise of the powers referred to in paragraphs (a) to (f).

SECOND SCHEDULE

[Sections 108, 175, 246, 247, 279, 374 & 471.]

PREFERENTIAL DEBTS

1. Priority of payments to preferential creditors

The debts of a person who is adjudged bankrupt, or of a company that is in liquidation, are payable in the order of priority in which they are listed in paragraphs 2, 3 and 4.

2. First priority claims

(1) The expenses of the bankruptcy or liquidation have first priority and are payable in the order in which they are listed in subparagraph (2)(a) to (c).

(2) For the purposes of subparagraph (1), those expenses are as follows:

(a) the remuneration of the bankruptcy trustee or liquidator, and the fees and expenses properly incurred by that trustee or liquidator in performing the duties imposed, and exercising the powers conferred, by or under this Act;

(b) the reasonable costs of the person who applied to the Court for the order adjudging the person bankrupt or placing the company in liquidation;

(c) in the case of a creditor who protects or preserves assets of the bankrupt or company for the benefit of the creditors of the bankrupt or company by the payment of money or the giving of an indemnity—

(i) the amount received by the bankruptcy trustee or liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering those assets.

(3) In subparagraph (1), "reasonable costs" include the reasonable costs incurred between advocate and client in procuring the order concerned.

3. Second priority claims

(1) After the claims referred to in paragraph 2 have been paid, claims in respect of the following debts have second priority to the extent that they remain unpaid:

(a) all wages or salaries payable to employees in respect of services provided to the bankrupt or company during the four months before the commencement of the bankruptcy or liquidation;

(b) any holiday pay payable to employees on the termination of their employment before, or because of, the commencement of the bankruptcy or liquidation;

(c) any compensation for redundancy owed to employees that accrues before, or because of, the commencement of the bankruptcy or liquidation;

(d) amounts deducted by the bankrupt or company from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act (Cap. 470);

(e) any reimbursement or payment provided for, or ordered by the Industrial Court under the Labour Institutions Act, 2007 (No. 12 of 2007) to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, 2007 (No. 14 of 2007) respect of wages or other money or remuneration lost during the four months before the commencement of the bankruptcy or liquidation;

(f) amounts that are preferential claims under section 175(2) and (3);

(g) all amounts that are by any other written law required to be paid in accordance with the priority established by this subparagraph paid by the buyer to a seller on account of the purchase price of goods.

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(2) The total amount to which priority is to be given under any, or all, of subparagraphs (1)(a) to (e) may not, in the case of any one employee, exceed two hundred thousand shillings as at the commencement of the bankruptcy or liquidation.

(3) The amount specified in subparagraph (2) is subject to adjustment as follows:

(a) subject to sub-clause (d)—the Cabinet Secretary shall, by order published in the *Gazette*, make an adjustment that has effect for the three-year period from and including 1st July 2015 and for each subsequent three-year period;

(b) subject to sub-clause (d)—the Cabinet Secretary shall make such an order within three months after the end of an adjustment period;

(c) each adjustment is required to reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Employment Survey or similar employment index published by Kenya Bureau of Statistics (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period;

(d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, the Cabinet Secretary may not make an adjustment for that adjustment period;

(e) if, in accordance with sub-clause (d), no adjustment is made, the Cabinet Secretary shall ensure that the next adjustment made for any later adjustment period reflects any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the adjustment period for which the subsequent adjustment is to be made;

(f) all adjustments are cumulative and are to be rounded to the nearest shilling (with fifty cents being rounded to one shilling);

(g) any correction to the Quarterly Employment Survey on which an adjustment is based is to be disregarded until the adjustment that takes effect in the subsequent adjustment period, which has to reflect the corrected information in the calculation of that adjustment and to be otherwise made in accordance with this subparagraph.

(4) The amount specified in subparagraph (2), or that amount as adjusted under subparagraph (3), on the date of commencement of the bankruptcy or liquidation, continues to apply to the] bankruptcy or liquidation regardless of any change to that amount that is prescribed after the date of commencement of the bankruptcy or liquidation.

(5) In this paragraph—

"adjustment period" means the three-year period beginning on 1st July 2012[3] and each subsequent three-year period.

"employee" means a person employed by an employer for wages or a salary under a contract of service; and includes a home worker specified in of the Employment Act, 2007 (No. 11 of 2007), but does not include—

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(a) in the case of a bankruptcy—a nominee or relative of, a trustee for, the bankrupt ; or

(b) in the case of the liquidation of a company—a nominee or relative of, a trustee for, a director of the company;

"wages or salaries", in relation to an employee, includes—

(a) remuneration in the form of commission or payable for time or for piece work; and

(b) remuneration payable to an employee as holiday or sickness pay or in respect of absence from work for any other good reason.

4. Third priority claims

After the claims referred to in paragraphs 2 and 3 have been paid, the claims in respect of the following debts have third priority to the extent that they remain unpaid:

(a) tax deductions made by the bankrupt or company under the pay as you earn rules of the Income Tax Act (Cap. 470);

(b) non-resident withholding tax deducted by the company under the Income Tax Act;

(c) resident withholding tax deducted by the company under the Income Tax Act;

(d) duty payable within the meaning of section 2(1) of the Customs and Excise Act (Cap. 472).

5. Unsatisfied claims of the same priority to abate equally

Claims having the same priority rank equally among themselves and, subject to any maximum payment level prescribed by or under any written law, are payable in full, unless the property of the bankrupt or company is insufficient to meet them, in which case they abate in equal proportions.

THIRD SCHEDULE

[Sections 462 & 464.]

POWERS OF LIQUIDATOR IN A LIQUIDATION

PART 1 — POWERS EXERCISABLE WITH APPROVAL

1. Power to pay any class of creditors in full.

2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or by which the company may be become liable.

3. Power—

(a) to compromise, on such terms as may be agreed—

(i) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(ii) all questions in any way relating to or affecting the assets or the liquidation of the company; and

(b) to take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

4. (1) Power to borrow money for the beneficial realisation of the company's assets and to give security over those assets for the borrowing.

(2) This power may be exercised without the consent of secured creditors of the company so long as—

(a) approval for the exercise of the power is supported by a majority of the creditors (in number and value) holding at least seventy-five percent in value of the total amount that is owed by the company to its creditors; and

(b) the priorities of the secured creditors are preserved in relation to the assets of the company so that those creditors would be in no worse position than would be the case when the liquidation of the company completed.

5. Power to bring legal proceedings under section 505, 506, 682, 683 or 692.

PART 2 — POWERS EXERCISABLE WITHOUT APPROVAL IN VOLUNTARY LIQUIDATION OR WITH APPROVAL IN LIQUIDATION BY THE COURT

6. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.

7. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.

PART 3 — POWERS EXERCISABLE WITHOUT APPROVAL IN EVERY KIND OF LIQUIDATION

8. Power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

9. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.

10. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against the contributory's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

11. Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

12. (1) Power to obtain in the administrator's official name letters of administration to any deceased contributory, and to do in the administrator's official name any other act necessary for obtaining payment of any money due from a contributory or the contributory's estate that cannot conveniently be done in the name of the company.

(2) In all such cases the money due is to be treated, for the purpose of enabling the liquidator to obtain letters of administration or recover the money, as being be due to the liquidator personally.

13. Power to appoint an agent to do any business that the liquidator is unable to do personally.

14. Power to take all other action that may be necessary for the beneficial liquidation of the company.

FOURTH SCHEDULE

[Sections 576 & 583.]

POWERS OF ADMINISTRATORS

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as the administrator considers necessary.

2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.

3. (1) Power to borrow money for the beneficial realisation of the company's assets and to give security over those assets for the borrowing.

(2) This power may be exercised without the consent of secured creditors of the company so long as—

(a) approval for the exercise of the power is supported by creditors holding at least seventy-five percent in value of the total amount that is owed by the company to its creditors; and

(b) the priorities of the secured creditors are preserved in relation to the assets of the company so that those creditors would be in no worse position than would be the case if the company were liquidated.

4. Power to appoint an advocate solicitor or accountant or other professionally qualified person to assist the administrator in the performance of the administrator's functions.

5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6. Power to refer to arbitration any question affecting the company.

7. Power to effect and maintain insurance policies in respect of the business and property of the company.

8. Power to use the company's seal.

9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11. Power to appoint any agent to do any business that the administrator is unable to do himself or that can more conveniently be done by an agent and power to employ and dismiss employees.

12. Power to do all such things (including carrying out works) as may be necessary for the realisation of the property of the company.

13. Power to make any payment which is necessary or incidental to the performance of the administrator's functions.

14. Power to carry on the business of the company.

15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18. Power to make any arrangement or compromise on behalf of the company.

19. Power to call up any uncalled capital of the company.

20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21. Power to make or defend an application for the liquidation of the company.

22. Power to change the location of the company's registered office.

23. Power to do all other things incidental to the exercise of the other powers conferred by this Schedule.

FIFTH SCHEDULE

[Section 720.]

CROSS BORDER INSOLVENCY

PART 1 — GENERAL PROVISIONS

1. Rules applying to cross-border insolvency

(1) The provisions of this Schedule generally correspond to the provisions of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30th May 1997, and approved by the General Assembly of the United Nations on 15th December 1997 (General Assembly Resolution 52).

(2) However, certain modifications have been made to the Model Law in its application to Kenya.

2. Purpose of this Schedule

The purpose of this Schedule is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of attaining—

(a) co-operation between the courts and other competent authorities of Kenya 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 maximisation of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses with a view to protecting investment and preserving employment.

3. Scope of application of this Schedule

(1) Except as provided in subparagraph (2), this Schedule applies—

(a) assistance is sought in Kenya by a foreign court or a foreign representative in connection with a foreign proceeding;

(b) assistance is sought in a foreign State in connection with a proceeding under this Act and any other written law relating to insolvency in Kenya;

(c) a foreign proceeding and a proceeding under this Act and any other written law relating to Insolvency in Kenya 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 participation in, a proceeding under this Act or any other written law relating to insolvency in Kenya.

(2) This Schedule does not apply to a company that holds a licence granted under section 5 of the Banking Act if—

(a) the Central Bank of Kenya has intervened in the management of the company in accordance with section 34 of that Act and that intervention has not ceased; or

(b) the licence of the company is suspended as a result of the operation of section 47 of that Act.

4. Definitions for purposes of this Schedule

For the purposes of this Schedule—

"business establishment" means any place of operations if the debtor carries out a non-transitory economic activity with human means and goods or services;

"foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under to a law relating to insolvency in which proceeding the assets and financial affairs of the debtor are subject to control or supervision by a foreign court, either for the purpose of reorganisation or liquidation;

"foreign main proceeding" means a foreign proceeding taking place in a foreign State if the debtor has the centre of its main interests in that State;

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a foreign State if the debtor has a business establishment in that State;

"foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the re-organisation or the liquidation of the debtor's assets or financial affairs or to act as a representative in the foreign proceeding;

"foreign court", in relation to a foreign State, means a judicial or other authority authorised by a law of that State to control or supervise a foreign proceeding in that State;

"insolvency administrator" means —

(a) the Official Receiver;

(b) a bankruptcy trustee appointed under Part III of this Act;

(c) a liquidator appointed under Part VI or VII of this Act or under any other written law;

(d) an administrator appointed under Part VIII of this Act;

(e) the person (if any) responsible for supervising the debtor under a deed of composition approved by the Court under Division 24 of Part III of that Act; or

(f) a supervisor appointed in respect of a voluntary arrangement under Part IX or Division 1 of Part IV of this Act;

"Kenya insolvency proceeding", in relation to a debtor, means a collective judicial or administrative proceeding conducted under the law in Kenya relating to insolvency under which the assets and financial affairs of the debtor are administered, or the assets of the debtor are or will be realised for the benefit of secured or unsecured creditors.

5. International obligations of Kenya

To the extent that this Schedule conflicts with an obligation of Kenya 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 the treaty or agreement prevail.

6. Court to have jurisdiction

The Court shall perform the functions specified in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts.

7. Authorisation of insolvency administrator

An insolvency administrator is authorised to act in a foreign State on behalf of a Kenya insolvency proceeding under this Act or any other law relating to insolvency, as permitted by the applicable foreign law.

8. Public policy exception

(1) Nothing in this Schedule prevents the Court from refusing to take an action governed by this Schedule if the action is manifestly contrary to the public policy of Kenya.

(2) Before refusing to take an action under subparagraph (1), the Court shall consider whether it is necessary for the Attorney-General to appear and be heard on the question of the public policy of Kenya.

9. Additional assistance under other laws

Nothing in this Schedule limits the power of a court or an insolvency administrator to provide additional assistance to a foreign representative under other laws of Kenya.

10. Interpretation: Sixth Schedule

In the interpretation of this Schedule, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

PART 2 — ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN KENYA

11. Right of direct access

A foreign representative is entitled to apply directly to the Court.

12. Limited jurisdiction

The sole fact that an application under this Schedule is made to the Court by a foreign representative does not subject the foreign representative or the foreign assets and financial affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

13. Application by a foreign representative to commence a proceeding in Kenya

A foreign representative is entitled to apply to commence a proceeding under this Act or any other written law relating to insolvency if the conditions for commencing such a proceeding are otherwise satisfied.

14. Participation of a foreign representative in a proceeding

On recognition by the Court of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Act or any other written law relating to insolvency.

15. Access of foreign creditors to a Proceeding relating to insolvency

(1) Subject to subparagraph (2), foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Act or any other written law relating to insolvency, as creditors in Kenya.

(2) Subparagraph (1) does not affect the ranking of claims in a proceeding under this Act or the exclusion of foreign tax and social security claims from such a proceeding.

16. Notification to foreign creditors of a proceeding relating to insolvency

(1) Whenever, in a proceeding under this Act, notification is to be given to creditors in Kenya, the notification is also to be given to the known creditors that do not have addresses in Kenya.

(2) The Court may, in accordance with subparagraph (1), order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(3) The person ordered to give the notification shall ensure that it is given to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate.

(a) indicates a reasonable time period for lodging claims and specify the place for their lodgement;

(b) indicates whether secured creditors need to make their claims;

(c) includes any other information required to be included in such a notification to creditors under the law of Kenya and in accordance with orders of the Court; and

(d) is advertised in a local newspaper with wide national circulation.

PART 3 — RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

17. Application for recognition of a foreign proceeding

(1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition may be rejected if it is not accompanied by—

(a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in sub-paragraphs (a) and (b)—any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition may also be rejected if it not accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into English as the official language of Kenya.

18. Presumptions concerning recognition

(1) If the decision or certificate referred to in paragraph 17(2) indicates that the foreign proceeding is a proceeding within the meaning of paragraph 2(a) and that the foreign representative is a person or body within the meaning of paragraph 2(d), the Court is entitled to presume that that is the case.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic.

(3) In the absence of proof to the contrary, the debtor's registered office in the case of a body corporate, or the person's usual residence in the case of a natural person, is presumed to be the centre of the debtor's main interests.

19. Decision to recognise a foreign proceeding

(1) Subject to paragraph 8, the Court shall recognise a foreign proceeding if—

(a) the foreign proceeding is a proceeding within the meaning of paragraph 4;

(b) the foreign representative applying for recognition is a person or body within the meaning of that paragraph;

(c) the application meets the requirements of paragraph 17(2); and

(d) the application has been submitted to the Court.

(2) The Court shall recognise the foreign proceeding—

(a) as a foreign main proceeding if it is taking place in the State if 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 paragraph 4(f) in the foreign State.

(3) The Court shall hear and determine an application for recognition of a foreign proceeding at the earliest possible time.

(4) As soon as practicable after the Court has recognised the foreign proceeding under subparagraph (1), the foreign representative shall notify the debtor that the application has been recognised.

(5) This paragraph and paragraphs 17, 18 and 20 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

20. Subsequent information

After lodgement of—

(a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

21. Relief that may be granted on application for recognition of a foreign proceeding

(1) If, at any time from the time of lodgement of an application for recognition until the application is determined, the Court, at the request of the foreign representative, is satisfied that relief is urgently needed to protect the assets of the debtor or the interests of the creditors, it may grant relief of a provisional nature, including—

(a) staying execution against the debtor's assets;

(b) entrusting the administration or realisation of all or part of the debtor's assets located in Kenya to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(c) any relief mentioned in paragraph 23(1) (c) and (d).

(2) As soon as practicable after the Court grants relief under subparagraph (1), the foreign representative shall notify the debtor of the relief that has been granted.

(3) Unless extended under paragraph 23(1)(f) the relief granted under this paragraph terminates when the application for recognition is determined.

(4) The Court may refuse to grant relief under paragraph if it would interfere with the administration of a foreign main proceeding.

22. Effects of recognition of a foreign main proceeding

(a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities is stayed;

(b) execution against the debtor's assets is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) Subparagraph (1) does not prevent the Court, on the application of any creditor or interested person, from making an order, subject to such conditions as the Court thinks fit, that the stay or suspension does not apply in respect of any particular action or proceeding, execution, or disposal of assets.

(3) Subparagraph (1) (a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Subparagraph (1) does not affect the right to request the commencement of a proceeding under this Act or any other written law relating to insolvency or the right to make claims in such a proceeding.

23. Relief that may be granted on recognition of a foreign proceeding

(1) On recognition by the Court of a foreign proceeding, whether main or non-main, if 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 in accordance with paragraph 22(1)(a);

(b) staying execution against the debtor’s assets to the extent it has not been stayed in accordance with paragraph 22(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 in accordance with paragraph 22(1)(c);

(d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor’s assets, financial affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor’s assets located in Kenya to the foreign representative or another person designated by the Court; and

(f) extending relief granted under paragraph 21(1).

(2) On recognition by the court of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Kenya to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Kenya are adequately protected.

(3) In granting relief under this paragraph to a representative of a foreign non-main proceeding, the Court shall satisfied itself that the relief relates to assets that, under the law of Kenya, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

24. Protection of creditors and other interested persons

(1) In granting or denying relief under paragraph 21 or 23, or in modifying or terminating relief under subparagraph (3), the Court shall ensure that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) In granting relief under paragraph 21 or 23, the Court may impose such conditions as it considers appropriate.

(3) The Court may—

(a) at the request of the foreign representative;

(b) a person affected by relief granted under paragraph 21 or 23; or

(c) on its own initiative, modify or terminate the relief.

(4) The Court shall, on application of the statutory manager (if any) or the Official Receiver, terminate the relief granted under paragraph 21 or 23 if—

(a) an application for recognition has been made in respect of a debtor that is a bank;

(b) the Court has granted that application or the Court has granted relief under paragraph 21; and

(c) an insolvency event occurs in relation to the debtor after that application or relief has been granted.

(5) The following are insolvency events for the purposes of subparagraph (4):

(a) if the debtor is a natural person—the making of a bankruptcy order in respect of the person; or

(b) if the debtor is a company or other body corporate—the making of a liquidation order in respect of the company or the passing of a voluntary resolution for the liquidation of the company.

25. Actions to avoid acts detrimental to creditors

(1) On recognition by the Court of a foreign proceeding, the foreign representative has standing to initiate any action that an insolvency administrator may take in respect of a proceeding under this Act that relates to a transaction (including any gifts or improvement of property or otherwise), security, or charge that is voidable or may be set aside or altered.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court shall ensure that the action relates to assets that, under the law of Kenya, should be administered in the foreign non-main proceeding.

(3) Nothing in subparagraph (1) affects the doctrine of "relation back" as it is applied in Kenya.

26. Intervention by a foreign representative in proceedings in Kenya

On recognition by the court of a foreign proceeding, the foreign representative may intervene in any proceeding in which the debtor is a party, so long as the requirements of the law of Kenya are complied with.

PART 4 — CO-OPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

27. Co-operation and direct communication between the Court and foreign courts or foreign representatives

(1) In relation to matters referred to in paragraph (3), the Court shall co-operate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

28. Co-operation and direct communication between the insolvency administrator and foreign representatives

(1) In relation to matters referred to in paragraph 3(1), an insolvency administrator shall, in the performance of that administrator's functions and, subject to the supervision of the Court, co-operate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency administrator is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

29. Forms of co-operation

Co-operation referred to in paragraphs 27 and 28 may be implemented by any appropriate means, including—

(a) appointment of a person or body to act at the direction of the Court;

(b) communication of information by any means considered appropriate by the Court;

(c) co-ordination of the administration and supervision of the debtor's assets and financial affairs;

(d) approval or implementation by courts of agreements concerning the co-ordination of proceedings; and

(e) co-ordination of concurrent proceedings regarding the same debtor.

PART 5 — CONCURRENT PROCEEDINGS

30. Commencement of a proceeding in Kenya after recognition of a foreign main proceeding

(1) After the Court has recognised a foreign main proceeding, a proceeding under this Act or may be commenced only if the debtor has assets in Kenya.

(2) The effects of that proceeding are limited to the assets of the debtor that are located in Kenya and, to the extent necessary to implement co-operation and co-ordination under paragraphs 27, 28 and 29, to other assets of the debtor that, under the law of Kenya, should be administered in that proceeding.

31. Co-ordination of proceeding under the law of Kenya and a foreign proceeding

If a foreign proceeding and a proceeding under this Act are taking place concurrently in respect of the same debtor, the Court shall seek co-operation and co-ordination under paragraphs 27, 28, and 29, in which case the following provisions have effect:

(a) when the proceeding in Kenya is taking place at the time when the application for recognition of the foreign proceeding is made—

(i) any relief granted under paragraph 21 or 23 are to be consistent with the proceeding in Kenya; and

(ii) if the foreign proceeding is recognised in Kenya as a foreign main proceeding—paragraph 22 does not apply;

(b) (ii) the Court shall review any relief in effect under paragraph 21 or 23 and shall modify or terminate it if it is inconsistent with the proceeding in Kenya;

(ii) if the foreign proceeding is a foreign main proceeding, the Court shall, in accordance with paragraph 22(2), modify or terminate the stay or suspension referred to in paragraph 22(1) if it is inconsistent with the proceeding in Kenya;

(c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court shall ensure that the relief relates to assets that, under the law of Kenya, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

32. Co-ordination of more than one foreign proceeding

If, in addition to a proceeding under this Act, two or more foreign proceedings are taking place concurrently in respect of the same debtor, the Court shall seek co-operation and co-ordination under paragraphs 27, 28 and 29, in which case the following provisions have effect:

(a) the Court shall ensure that any relief granted under paragraph 21 or 23 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding is consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognised after recognition, or after the lodgement of an application for recognition, of a foreign non-main proceeding—the Court shall review any relief in effect under paragraph 21 or 23 and shall modify or terminate it if it is inconsistent with the foreign main proceeding;

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating co-ordination of the proceedings.

33. Presumptions of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Act, proof that the debtor is insolvent.

34. Rule of payment in concurrent proceedings

Without affecting secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding under 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, if the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.