



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**RESCUE, REHABILITATION AND INSOLVENCY
(CORPORATE AND PERSONAL) ACT, No. 12 OF 2026**

[Certified on 17th of June, 2026]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the
Democratic Socialist Republic of Sri Lanka** of July 10, 2026

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA
TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 5

Price : Rs. 1480.00

Postage : Rs. 150.00

This Act can be downloaded from www.documents.gov.lk



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*Rescue, Rehabilitation and Insolvency
(Corporate and Personal) Act, No. 12 of 2026*

[Certified on 17th of June, 2026]

L. D.- O 49/2024

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO THE RESCUE, REHABILITATION AND INSOLVENCY OF INDIVIDUALS AND COMPANIES; TO REPEAL THE INSOLVENCY ORDINANCE (CHAPTER 97); TO AMEND THE COMPANIES ACT, No. 07 OF 2007; TO AMEND THE INLAND REVENUE ACT, No. 24 OF 2017; TO AMEND THE MEDIATION BOARDS ACT, No. 72 OF 1988; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

WHEREAS the Government of Sri Lanka has deemed it desirable to enact a code for the timely, efficient and impartial rescue and rehabilitation of individuals and viable enterprises in financial distress and closure of non-viable enterprises:

Preamble

AND WHEREAS it has become necessary to enhance predictability of insolvency and reduce unnecessary losses of value due to insolvency by encouraging creditors to cooperate in producing outcomes beneficial to the interests of creditors as a whole and the public interest and to provide safeguards against misconduct in credit transactions:

AND WHEREAS it has become essential to cater to the regulation, supervision and discipline of insolvency professionals. It is also desired to maximise the value of a debtor's property and recoveries by creditors in order to enhance the efficient recovery of debts, by creditors:

AND WHEREAS in relation to personal insolvency it has become necessary to promote economic activity and to reduce social costs of insolvency by relieving the honest individual debtor from the weight of oppressive indebtedness, and permit such debtor to start afresh. Similarly, to encourage entrepreneurship and support the rehabilitation and rescue of viable businesses and to continue in such business micro, small, or medium enterprises - including sole proprietorships, partnerships, and other unincorporated businesses:

PL 15713 - 868 (03/2026)

NOW THEREFORE BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

Short title
and date of
operation

1. (1) This Act may be cited as the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026.

(2) The provisions of this section shall come into operation on the date on which the certificate of the Speaker is endorsed in respect of this Bill in terms of Article 80 of the Constitution.

(3) Subject to subsection (4), all other provisions of this Act shall come into operation on the expiry of a period of six months from the date on which the certificate of the Speaker is endorsed under subsection (2).

(4) The Minister may, at any time within one month prior to the date on which this Act is due to come into operation under subsection (3), by Order published in the *Gazette*, extend further the period specified in subsection (2):

Provided however, the aggregate period of such extension shall not exceed two years from the date on which the certificate of the Speaker is endorsed.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“administration” means administration under Part IX and “administrator” shall have the corresponding meaning;

“administration creditors’ committee” means a committee established under section 217;

“appointee” means a receiver or a manager or a receiver and a manager of any property appointed otherwise than under this Act, whether or not that person is empowered to sell any of such property;

“assetless company” means a company in liquidation that has—

- (a) insufficient assets, to meet the likely costs, charges and expenses of the liquidation and to remunerate the liquidator; and
- (b) no reasonable prospect of paying any distribution to creditors;

“Authority” means the Insolvency Regulatory Authority;

“bank” means a licensed commercial bank or a licensed specialised bank within the meaning of the Banking Act, No. 30 of 1988;

“bank account” means an account held at a bank;

“bankrupt debtor”, in relation to a Bankruptcy procedure, means the debtor in respect of whom a Bankruptcy Order has been made;

“Bankruptcy Trustee” means a person appointed as a Bankruptcy Trustee under section 98;

“commencement” with respect to –

- (a) the administration of a company, shall have the meaning given to it under section 179;
- (b) the deed administration of a company, shall have the meaning given to it under subsection (2) of section 228;
- (c) a bankruptcy, shall have the meaning given to it under section 92;
- (d) the liquidation of a company, shall have the meaning given to it under section 297;
- (e) the provisional liquidation of a company, shall have the meaning given to it under subsection (3) of section 304;
- (f) the receivership of property of a company, shall have the meaning given to it under section 369;

“Companies Act” means the Companies Act, No. 07 of 2007;

“company” means a company incorporated under the Companies Act or an existing company, and

- (a) includes an off-shore company for the purposes of Part XI of the Companies Act; but
- (b) excludes the types of entities set out in the Second Schedule;

“connected party” means a person who is connected to another person in the manner set out in the Third Schedule;

“Constitutional Council” means the Constitutional Council established under Article 41A of the Constitution;

“contributory” with respect to a company –

- (a) means –
 - (i) every shareholder of the company, and every person to whom a share has been transmitted by operation of law; and
 - (ii) every other person liable to contribute to the assets of the company in the event of its liquidation; and
- (b) includes, for the purposes of all proceedings for determining and all proceedings prior to final determination of the persons who are contributories, any person alleged to be a contributory within the meaning of paragraph (a);

“control” means ownership either directly or indirectly of more than fifty *per cent* of the capital of a person; the power, right or ability, directly or indirectly to direct or cause the direction of the management, policies or affairs of a person, whether by statute or by any written law or contract; or ownership of the voting capital, or otherwise;

“creditor” includes a person to whom a company or an individual owes a debt or is under a liability, whether present or future, certain or contingent and whether ascertained or sounding in damages;

“debtor”, in relation to a personal insolvency procedure, means-

- (a) before a Personal Insolvency Order has been made, the individual in respect of whom an application, petition or proposal has been made or is being prepared; and
- (b) after a Personal Insolvency Order has been made, the individual in respect of whom an order has been made;

“deed administration” means deed administration under Part IX and “deed administrator” shall have the corresponding meaning;

“director”, with respect to a company, includes –

- (a) a person occupying the position of a director of the company, by whatever name called; and
- (b) for the purposes of the definition “involved party” and for the purposes of sections 9, 182, 313, 371, 440 and 442 includes –

- (i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) may be required or is accustomed to act;
- (ii) a person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act;
- (iii) a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the articles of the company, would be required to be exercised by the board,

but shall not apply to a person if and to the extent that the person acts only in a professional capacity;

“encumbrance” means security of every kind;

“enforce”, with respect to an encumbrance over property of a company or an individual, includes –

- (a) giving notice converting a floating charge into a fixed charge;
- (b) entering into possession or custody or assuming control of property of the company or individual by way of enforcement of the encumbrance;
- (c) appointing a receiver of property of the company or individual under an instrument, under section 372 by way of enforcement of the encumbrance;
- (d) applying to court under section 373 for the appointment of a receiver of property of the company or individual by way of enforcement of the encumbrance;

- (e) appointing an appointee or applying to court for the appointment of an appointee, by way of enforcement of the encumbrance;
- (f) appointing a person to enter into possession or custody or assume control of property of the company or individual, as agent for –
 - (i) the grantee of the encumbrance; or
 - (ii) the company or individual,by way of enforcement of the encumbrance;
- (g) exercising, as grantee of the encumbrance or as a receiver or person so appointed, a right or remedy existing because of the encumbrance, whether arising under an instrument, under an enactment or otherwise; and
- (h) taking a step with a view to recovery of a debt under the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990;

“essential goods or services” means –

- (a) electricity;
- (b) relevant information technology;
- (c) telecommunications services; and
- (d) water;

“Fiscal” includes any officer charged with the execution of a writ or another legal process;

“floating charge” means a charge that, when it was created, was a floating charge within the meaning of section 427(1) of the Companies Act;

“goods” means tangible movable property of every kind;

“grantee”, with respect to an instrument that creates an encumbrance, means, the person entitled to the benefit of the instrument;

“hire-purchase agreement” includes a conditional sale agreement, chattel leasing arrangement, finance lease and the retention of the title agreement;

“Insolvency Holding Account” means, the account referred to in section 431;

“Insolvency Practitioner” means a person registered by the Authority as such under the provisions of Chapter 3 of Part I;

“Insolvency Surplus Account” means the account referred to in section 431;

“insolvent”, with respect to an individual, shall have the meaning given to it in subsection (1) of section 409; and a company, shall have the meaning given to it in subsection (2) of section 409;

“involved party”, with respect to a company, means –

- (a) a person who has taken part in the formation, promotion or management of the company;
- (b) a past or present shareholder of the company;
- (c) a past or present director or other officer of the company;
- (d) a past or present administrator, deed administrator, liquidator, special manager, receiver of property or appointee in respect of property of the company; or

(e) someone who purports or has purported to be an administrator, deed administrator, liquidator, special manager, receiver of property or appointee in respect of property of the company;

“key office holder” means a Bankruptcy Trustee, personal insolvency administrator, personal insolvency proposer, administrator, liquidator, provisional liquidator or receiver;

“legal proceedings”, for the purposes of Parts II to VIII includes, where relevant, mediation and arbitration;

“liquidation” means liquidation under Part XII and “liquidator” shall have the corresponding meaning;

“liquidation contributories’ committee” means a committee established under section 309 ;

“liquidation creditors’ committee” means a committee established under section 308;

“Minister” means the Minister assigned the administration of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026 under Article 44 or 45 of the Constitution;

“office holder” means a Bankruptcy Trustee, personal insolvency administrator, personal insolvency proposer, administrator, deed administrator, liquidator, provisional liquidator or receiver;

“officer”, with respect to a body corporate, includes a director, secretary, an executive or a member of the senior management team;

“personal insolvency administrator” means the office referred to in Chapter 3 of Part IX;

“personal insolvency official” means a Bankruptcy Trustee, authorised intermediary, personal insolvency administrator, personal insolvency proposer or the Official Receiver;

“Personal Insolvency Order” includes -

- (a) a Debt Protection Moratorium Order;
- (b) an order confirming the coming into effect of the Individual Debt Restructuring Arrangement;
- (c) a Debt Rehabilitation Order; and
- (d) a Bankruptcy Order;

“Personal Insolvency Procedure” includes-

- (a) the Personal Debt Protection Moratorium procedure under Part III;
- (b) the Debt Restructuring Arrangement procedure under Part IV;
- (c) the Debt Rehabilitation Order procedure under Part V; and
- (d) the Bankruptcy procedure under Part VI;

“personal insolvency proposer” means the office referred to in section 49 ;

“pre-administration costs”, with respect to a company, means costs, charges and expenses incurred by and remuneration of an administrator in relation to the company before the company entered into administration and with a view to such entry into

administration and to furthering the achievement of the objective referred to in paragraph (d) of section 178;

“preferential claim” means a claim referred to in paragraph 1, 2 or 8 of the Fourth Schedule;

“prescribed” means prescribed by regulation;

“property” means property of every kind, whether real or personal, tangible or intangible, and includes interests of every kind, whether present or future, certain or contingent, arising out of, or incidental to, property;

“property in receivership” means property in respect of which a receiver is appointed;

“provisional liquidation” means provisional liquidation under Part XII and “provisional liquidator” shall have the corresponding meaning;

“receiver” other than for the purposes of the definition, “appointee”, means a receiver or a manager or a receiver and a manager of any property, who is or would be, as the context requires, appointed –

(a) under an instrument; or

(b) by the court,

under this Act, whether or not that person is or would be, as the case may be, empowered to sell any of such property, and “receivership” shall have the corresponding meaning;

“Registrar” shall have the meaning given to it in the Companies Act;

“related company” means with respect to any company –

- (a) any other company directly or indirectly controlling, controlled by, or under common control with, such first company; and
- (b) any other company which is considered to be an associate company of the first company in terms of the Sri Lanka Accounting Standards for the time being in force;

“relevant date” means –

- (a) in the case of an administration, or a liquidation that was immediately preceded by an administration, the date of commencement of the administration;
- (b) in the case of a liquidation that was not immediately preceded by an administration, the date of commencement of the liquidation; and
- (c) in the case of a receivership, the date of commencement of the receivership;

“relevant information technology” means –

- (a) computer hardware and software;
- (b) data storage and processing, including cloud services;
- (c) information, advice and technical assistance in relation to the use of information technology;
- (d) point-of-sale terminals; and
- (e) website hosting;

“replacement administrator” means an administrator who is or would be, as the context requires, appointed under Chapter I of Part IX to replace an administrator;

“replacement deed administrator” means a deed administrator who is or would be, as the context requires, appointed under Part IX to replace a deed administrator;

“replacement liquidator” means a liquidator who is or would be, as the context requires, appointed under Part XII to replace a liquidator;

“replacement receiver” means a receiver who is or would be, as the context requires, appointed under Part XIII to replace a receiver;

“secured creditor” means a creditor who has the benefit of an encumbrance;

“shareholder”, with respect to a company, means a shareholder within the meaning of section 86 of the Companies Act;

“statutory demand” means a written demand, in such form as may be prescribed, requiring a company to pay a sum that is due;

“telecommunications services” means the conveyance from one device to another by a line, radio frequency, satellite transmission or other medium of a sign, signal, impulse, writing, image, sound, instruction or information of any nature, whether or not for the information of a person using the device;

“transaction at an undervalue” shall have the meaning given to it in section 418;

“uncalled capital” includes any amount payable in respect of the issue of shares or under the articles of a company;

“voidable transaction” means –

- (a) a voidable preference;
- (b) a voidable encumbrance; or
- (c) an alienation with intent,

which terms shall have the meanings given to them under sections 412, 413 and 414 respectively;

“working day” means a day other than Saturday, Sunday or a public holiday.

(2) In this Act –

- (a) references to an encumbrance over the whole, or substantially the whole, of a company’s property and undertaking include references to two or more encumbrances over the property of the company where the property of the company subject to those encumbrances together is the whole, or substantially the whole, of the company’s property and undertaking; and
- (b) except in section 8 references to the Official Receiver include references to a Deputy Official Receiver acting on behalf of or standing in the place of the Official Receiver under subsection (6) of that section.

(3) This Act shall be interpreted and applied so as to secure that a reference to an event or thing shall include –

- (a) virtual or digital equivalent, so that–
 - (i) references to a book, document, record or the like include data and information held in electronic form;

- (ii) references to “delivery” or “making available” books, documents, records, property or the like include affording access to and the transmission of the same;
 - (iii) references to “writing” include graphical communication by any electronic means;
 - (iv) references to “advertisement” or “notice” include publication on a dedicated website, including one provided for that purpose by the Authority, notified, where necessary to be effective, in writing; and
- (b) any other equivalent as may from time to time be prescribed.

PART I

Institutional Arrangements

CHAPTER 1

THE INSOLVENCY REGULATORY AUTHORITY

3. (1) There shall be established an Authority which shall be called and known as the “Insolvency Regulatory Authority ” (in this Act referred to as the “Authority”) to exercise, perform and discharge the powers, duties and functions specified in this Act.

Establishment
of the
Insolvency
Regulatory
Authority

(2) The Authority shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The members of the Authority shall consist of –

- (a) the following *ex-officio* members namely-

- (i) the Secretary to the Ministry of the Minister assigned the subject of Finance or his nominee not below the rank of Deputy Secretary to the Treasury;
- (ii) the Secretary to the Ministry of the Minister assigned the subject of Justice or his nominee not below the rank of an Additional Secretary;
- (iii) the Secretary to the Ministry of the Minister assigned the subject of Trade or Commerce or his nominee not below the rank of an Additional Secretary;
- (iv) the Registrar of Companies or his nominee not below the rank of an Additional Registrar of Companies;
- (v) the Director-General of Securities and Exchange Sri Lanka appointed under section 19 of the Securities and Exchange Commission Act, No. 19 of 2021 or his nominee not below the rank of Deputy Director-General;
- (vi) the Commissioner-General of Inland Revenue appointed under section 97 of the Inland Revenue Act, No. 24 of 2017 or his nominee not below the rank of Deputy Commissioner-General;
- (vii) the Governor of the Central Bank appointed under section 14 of the Central Bank Act, No. 16 of 2023 or his nominee not below the rank of an Assistant Governor; and
- (viii) two members, each nominated by the Board of the Ceylon Chamber of Commerce established under the Chamber of Commerce

Ordinance (Chapter 289) and the Board of the National Chamber of Commerce, respectively; and

- (b) five other members appointed under subsection (5) (in this Act referred to as the “appointed members”), from among the persons below the age of seventy years and having distinguished themselves with proven knowledge, experience and eminence in the fields of taxation, accountancy, banking, information technology, civil, commercial or corporate law and who shall be competent, honest, of high morality and of good repute.

(4) (a) The Constitutional Council shall, within one month from the date of coming into operation of this Act, call for applications for the appointment of the appointed members by publishing a notice -

- (i) in the *Gazette*; and
- (ii) on the official website of the Parliament.

(b) The Constitutional Council in respect of a future vacancy in the appointed members shall, within one month from being informed of such vacancy in writing, call for applications for the appointment of the appointed members by publishing a notice -

- (i) in the *Gazette*; and
- (ii) on the official website of the Parliament.

(5) Upon receipt of the applications under subsection (4), the Constitutional Council shall forward its recommendations of the persons to be appointed to the President. The President shall proceed to appoint the persons so recommended, one of whom shall be the Chairperson of the Authority.

(6) The provisions relating to appointed members of the Authority and such other provisions as are necessary for the proper implementation of the affairs of the Authority shall be as set out in the First Schedule.

(7) The appointed members of the Authority shall be paid a remuneration in such manner and at such rates as may be determined by the Minister, from time to time, with the concurrence of the Minister assigned the subject of Finance, and such remuneration shall not be diminished during their term of Office.

The powers,
duties and
functions of
the Authority

4. (1) The powers, duties and functions of the Authority shall be to -

- (a) keep under review the law and practice relating to insolvency of individuals and companies in Sri Lanka and make recommendations to the Minister on any changes considered to be necessary;
- (b) register, renew the registration of, and cancel or suspend the registration of, persons as Insolvency Practitioners;
- (c) keep and maintain a register of Insolvency Practitioners;
- (d) impose conditions on –
 - (i) individual Insolvency Practitioners;
 - (ii) all Insolvency Practitioners; and
 - (iii) Insolvency Practitioners of one or more specified classes;
- (e) foster the development of training, in association with all relevant professional bodies, to enhance the skills and standards of Insolvency Practitioners;

- (f) maintain a list of requirements with which a person must comply in order to be registered as an Insolvency Practitioner, and make arrangements for assessing compliance with those requirements, in the manner prescribed;
- (g) make rules, standards, codes of conduct and guidelines, regarding the conduct and performance of Insolvency Practitioners;
- (h) make practice directions and guidelines regarding any act or matter required to be done or performed under this Act and any regulation made thereunder;
- (i) monitor the conduct and performance of Insolvency Practitioners;
- (j) establish and maintain procedures for the receipt, handling and determination of complaints against Insolvency Practitioners, including redress in instances where complaints are upheld;
- (k) impose disciplinary sanctions on Insolvency Practitioners on such grounds and of such nature as may be prescribed, subject to such conditions as may be prescribed;
- (l) make applications to the court for the removal from office of an Insolvency Practitioner and for prohibition orders;
- (m) direct any officer of the Authority to participate in court proceedings relating to the conduct or performance of an Insolvency Practitioner;
- (n) monitor the conduct and performance of the Official Receiver and receive reports from the Official Receiver as requested or in accordance with a prescribed schedule for periodic reporting

- on any matter relating to the performance of the Official Receiver's functions under this Act and any regulation made thereunder and report to the Registrar on the conduct and performance of the Official Receiver and any resourcing or other needs in relation to the effective performance of the Official Receiver's functions;
- (o) issue rules, standards and guidelines, regarding the carrying out of the role of Bankruptcy Trustee, authorised intermediary, personal insolvency administrator, personal insolvency proposer, administrator, deed administrator, liquidator, provisional liquidator or receiver;
 - (p) establish and maintain a personal insolvency register;
 - (q) carry out research, commission studies, disseminate information and provide public education in the area of insolvency of individuals and companies;
 - (r) establish and maintain communication and liaison with domestic and international entities as may be necessary for the performance of its functions;
 - (s) compile and maintain, statistics and data as may be necessary, for the due exercise, performance and discharge of its powers, functions and duties;
 - (t) establish committees as are required for effectively administering its functions and delegate such powers and functions as are necessary to such committees; and

- (u) do all such other acts as may be considered necessary, incidental and ancillary to the exercise, performance and discharge of its powers, duties and functions under this Act and any regulation made thereunder.

(2) The Authority may delegate any of its powers and functions to -

- (a) any one of its members;
- (b) the Director-General of the Authority appointed under section 5; or
- (c) an officer of the Authority,

and such powers and functions shall be exercised and performed, subject to the general directions of the Authority.

5. (1) The Director-General of the Authority shall be changed with the administration and management of the affairs of the Authority.

The Director -
General of the
Authority

(2) The Authority shall appoint a Director-General, who shall be a person having qualifications and experience in the field of accountancy, law or finance relating to insolvency and the Director-General shall be the Chief Executive Officer of the Authority.

(3) There may be appointed, by the Authority, such other officers and servants as may be necessary as set out in the First Schedule to assist the Authority in the exercise, performance and discharge of its powers, duties and functions.

(4) The Director-General shall, subject to the general direction and control of the Authority, administer the affairs and transaction of business of the office of the Authority, and undertake the administration and control of the employees of the Authority.

(5) On the approval of the Authority, the Director-General may delegate to any employee any power or function conferred or imposed on or assigned to him by this Act and such employee shall exercise and perform such power or function, subject to the special directions of the Director-General.

(6) The Director-General shall be paid such remuneration as may be determined by the Authority, from time to time, with the concurrence of the Minister assigned the subject of Finance and shall not be diminished during his term of Office.

Fund of the
Authority

6. (1) The Authority shall have its own Fund.

(2) There shall be paid into the Fund –

- (a) all such sums of money as may be voted upon from time to time by Parliament for the use of the Authority;
- (b) such funds as may be provided by the State to enable the Authority to discharge the functions assigned to it by this Act;
- (c) such sums of money that may be raised by the Authority in accordance with the provisions of this Act;
- (d) all other sums accruing to the credit of the Authority; and
- (e) all such sums of money as may be received by the Authority by way of donations, gifts or grants from the Consolidated Fund, the Government or from a foreign Government, State Agencies and multilateral and bilateral agencies whether within or outside Sri Lanka, provided that the funds are channelled through the Department of External Resources as may be necessary.

(3) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its powers, functions and duties.

(4) Monies belonging to the Fund of the Authority may be invested by the Authority in such manner as may be determined by the Authority.

7. (1) The Authority shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Authority.

Accounts and
audit

(2) For the purpose of presenting a true and fair view of the financial performance and financial condition of the Authority, the Authority shall prepare its accounts in accordance with the Sri Lanka Accounting Standards adopted by the Institute of Chartered Accountants of Sri Lanka under the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995 or any other applicable written law in force.

(3) The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations shall apply to the audit of the accounts of the Authority.

CHAPTER 2

OFFICIAL RECEIVER

8. (1) The Minister shall appoint -

Official
Receiver
and Deputy
Official
Receivers

- (a) a suitable person by name or by office to be Official Receiver; and
- (b) one or more suitable persons by name or by office to be Deputy Official Receivers, to act on behalf of or stand in the place of the Official Receiver where it is necessary or expedient to do so.

(2) The Official Receiver and Deputy Official Receivers shall be officers of the court.

(3) The Official Receiver and Deputy Official Receivers –

- (a) shall hold office on such terms and conditions as the Minister may direct; and
- (b) may be removed from office by a direction of the Minister.

(4) The Director-General shall monitor the conduct and performance of the Official Receiver and Deputy Official Receivers, and may require the Official Receiver to provide to the Director-General any document or information that may concern the conduct and performance of ones office or that of a Deputy Official Receiver.

(5) Deputy Official Receivers shall discharge their duties and exercise their powers subject to the control and direction of the Official Receiver.

(6) Any Deputy Official Receiver may act on behalf of or stand in the place of the Official Receiver and while doing so shall –

- (a) have all of the authority and powers of the Official Receiver; and
- (b) be subject to the same restrictions and limitations as may be imposed on the Official Receiver by this Act or any regulation made thereunder.

Powers of
the Official
Receiver

9. The powers of the Official Receiver shall be –

- (a) to serve as liquidator or provisional liquidator;
- (b) to serve as Bankruptcy Trustee or Interim Receiver;

- (c) to make applications for the disqualification of directors, and undertake associated activities;
- (d) to deal with the Insolvency Holding Account and Insolvency Surplus Account, and undertake associated activities;
- (e) to take action in respect of the conduct of debtors in Bankruptcy;
- (f) to make applications under section 419; and
- (g) any other powers provided for in this Act or any regulation made thereunder.

10. (1) The Official Receiver may –

Office and
name of
Official
Receiver

- (a) sue and be sued in the name of “the Official Receiver of the property of [*inserting the name of the debtor in bankruptcy or of the company in liquidation*]”; and
- (b) in that name, do any act necessary or expedient to be done in the execution of the Official Receiver’s office.

(2) The Official Receiver may execute any document by signing the private name of the Official Receiver under the official name of Official Receiver, but nothing in this subsection shall prevent the Official Receiver from executing a document by affixing the seal of the office of Official Receiver thereto and attesting the affixing of the seal.

11. (1) A person holding the office of Official Receiver shall not be appointed, act or continue to act as Bankruptcy Trustee if –

Instances
when an
Official
Receiver shall
not act as a
Bankruptcy
Trustee

- (a) the person holding the office of Official Receiver is a creditor of the debtor in Bankruptcy; and

- (b) the creditors decide, by resolution, that they do not wish the person to act as such.

(2) A person holding the office of Official Receiver shall not be appointed, act or continue to act as liquidator or provisional liquidator of a company if –

- (a) the person holding the office of Official Receiver is a creditor of such company; and
- (b) the creditors decide, by resolution, that they do not wish the person to act as such.

(3) Where the creditors adopt a resolution of the kind referred to in paragraph (b) of subsection (1) or paragraph (b) of subsection (2), the Director-General shall appoint another person from among those appointed under subsection (1) of section 8 to act as Bankruptcy Trustee, liquidator or provisional liquidator.

CHAPTER 3

INSOLVENCY PRACTITIONERS

Individuals
who are
qualified to
be appointed
and act as key
office holder

12. Other than the Official Receiver with respect to a bankruptcy, liquidation or provisional liquidation, an individual shall be qualified to be appointed or act as a key office holder in respect of an activity, only if –

- (a) the person is registered by the Authority as an Insolvency Practitioner;
- (b) the person's registration is not suspended under section 18;
- (c) the person's registration is not subject to any condition imposed under section 15 that prevents or limits the person from serving as a key office holder in respect of the activity;

- (d) the person is not an undischarged bankrupt debtor;
- (e) the person has not been adjudged to be of unsound mind under the Mental Diseases Ordinance (Chapter 227);
- (f) the person is not subject to a prohibition order made under section 27; and
- (g) the person is not prohibited under either section 213 of the Companies Act, or by an order made under section 214 of the Companies Act, from being appointed or acting as an office holder.

13. A body corporate may not be appointed or act as an office holder.

Body
corporate
may not be
appointed or
act as office
holder

14. (1) An individual may apply to the Authority, in such manner and upon the payment of such registration fee as may be prescribed, for registration as an Insolvency Practitioner.

Registration

(2) Upon receipt of an application under subsection (1), the Authority –

- (a) shall follow such procedure as may be prescribed, including as to appeals; and
- (b) shall, in accordance with that procedure and subject to subsection (4), register the person as an Insolvency Practitioner and issue a certificate of registration, in the manner prescribed.

(3) The requirements with which a person must comply in order to be registered as an Insolvency Practitioner shall include such requirements as to professional qualifications and experience, relevant examinations, and other relevant criteria, as are–

- (a) prescribed; or
- (b) contained in any rules made by the Authority.

(4) The Authority may not register a person as an Insolvency Practitioner unless it is satisfied that the person –

- (a) is a fit and proper person to be appointed and act as a key office holder; and
- (b) complies with the requirements for registration as an Insolvency Practitioner referred to in subsection (3).

(5) The Authority may register a person as an Insolvency Practitioner for a fixed period of one year or for such other period as may be prescribed, subject to renewal, cancellation or suspension of the registration under this Part.

Conditions

15. (1) The Authority may at any time impose a condition that limits the types of activity that such Insolvency Practitioners may undertake, in relation to the registration of all registered Insolvency Practitioners, or on one or more specified classes of registered Insolvency Practitioners.

(2) The conditions imposed under subsection (1) may include compliance with such continuing professional development requirements as the Authority considers appropriate.

(3) Without prejudice to subsection (1), the Authority may at any time impose a condition on the registration of an Insolvency Practitioner that limits the types of activity that the Insolvency Practitioner may undertake.

(4) Subject to such conditions as may be prescribed, an Insolvency Practitioner may apply to the Authority for the variation or removal of a condition imposed on that Insolvency Practitioner under subsection (3).

(5) Following an application under subsection (4), the Authority shall follow such procedure as may be prescribed, including as to appeals.

16. (1) An individual may apply to the Authority, in such manner and upon the payment of such renewal fee as may be prescribed, for renewal of the individual's registration as an Insolvency Practitioner.

Renewal of
registration

(2) Following an application under subsection (1), the Authority –

- (a) shall follow such procedure as may be prescribed, including as to appeals; and
- (b) shall, in accordance with that procedure and subject to subsection (3), renew the registration of the person as an Insolvency Practitioner and issue a certificate of registration, in the manner prescribed.

(3) The Authority may not renew the registration of a person as an Insolvency Practitioner unless it is satisfied that the person –

- (a) is a fit and proper person to be appointed and act as a key office holder; and
- (b) complies with the requirements for registration as an Insolvency Practitioner maintained under section 14; and
- (c) such other criteria as may be prescribed.

(4) The Authority may renew the registration of a person as an Insolvency Practitioner for a fixed period of one year or for such other period as may be prescribed, subject to further renewal, cancellation or suspension of the registration under this Part.

17. (1) The Authority may cancel a person's registration as an Insolvency Practitioner –

Cancellation
of registration

- (a) if it is satisfied on reasonable grounds that –
 - (i) the person has died;
 - (ii) the person obtained the registration by making a false or misleading representation or declaration;
 - (iii) the person does not continue to meet or has not continued to meet the requirements for registration as an Insolvency Practitioner maintained under section 14;
 - (iv) the person does not meet or has not met a condition imposed on the person's registration as an Insolvency Practitioner under section 15;
 - (v) the person does not comply with or has not complied with the requirement in section 20; or
 - (vi) the person is otherwise not a fit and proper person to be appointed and act as a key office holder;
- (b) as a type of disciplinary action under section 24;
- (c) if the person is the subject of a prohibition order made under section 27;
- (d) if the person is prohibited either under section 213 of the Companies Act, or by an order made under section 214 of the Companies Act; or
- (e) if the person so requests.

(2) With respect to cancellation of a registration under subsection (1), the Authority shall follow such procedure as

may be prescribed, including in the case of paragraphs (a) (ii), (a)(iii) and (a)(iv) as to –

- (a) giving the Insolvency Practitioner a prior opportunity to be heard on the matter; and
- (b) appeals.

(3) The person shall not be appointed or act as a key office holder, for so long as a person's registration as an Insolvency Practitioner is cancelled under subsection (1).

18. (1) The Authority may suspend a person's registration as an Insolvency Practitioner – Suspension of registration

- (a) as the first step under subsection (3) of section 19;
- (b) if it is satisfied on reasonable grounds that the person does not continue to meet or has not continued to meet the requirements for registration as an Insolvency Practitioner maintained under section 14;
- (c) if it is satisfied on reasonable grounds that the person does not meet or has not met a condition imposed on the person's registration as an Insolvency Practitioner under section 15;
- (d) if it is satisfied on reasonable grounds that the person does not comply with or has not complied with the requirement in section 20;
- (e) if it makes an inquiry into the conduct or performance of the Insolvency Practitioner under section 23; or
- (f) as a type of disciplinary action under section 24,

on such terms and conditions as necessary, subject to any limit on the period of suspension as may be prescribed.

(2) With respect to suspension of a registration under subsection (1), the Authority shall follow such procedure as may be prescribed, including in the case of paragraphs (a), (b) and (c) as to –

(a) giving the Insolvency Practitioner a prior opportunity to be heard on the matter; and

(b) appeals.

(3) For so long as a person's registration as an Insolvency Practitioner is suspended under subsection (1), the person shall not be appointed or act as a key office holder.

(4) The Authority shall review suspended registrations at such times or on such occasions as may be prescribed, and in any event at or around the time at which the suspension is ended.

(5) With respect to review of a suspended registration under subsection (4), the Authority shall follow such procedure as may be prescribed, including as to –

(a) giving the Insolvency Practitioner a prior opportunity to be heard on the matter; and

(b) appeals.

(6) On completing a review under subsection (4), the Authority may end the suspension or extend the suspension, subject to any limit on the period of suspension as may be prescribed.

Register of
Insolvency
Practitioners

19. (1) The Authority shall keep and maintain a register of Insolvency Practitioners, in which shall be entered the name, address and qualifications of every Insolvency Practitioner.

(2) Within five working days after each appointment of an Insolvency Practitioner as an administrator, deed

administrator, liquidator or receiver, the Insolvency Practitioner shall give written notice of the appointment to the Authority.

(3) With respect to an Insolvency Practitioner, where the Authority receives a notice of an event referred to in paragraphs (a), (b), (c), (d) and (e) of section 21 or has reasonable grounds to suspect that any of those events has occurred, the Authority may, subject to subsection (5), take the following steps in the order in which they are specified –

- (a) first, suspend the Insolvency Practitioner’s registration as an Insolvency Practitioner, pending –
 - (i) the disposal by the court of the application referred to in sub- paragraph (i) of paragraph (c); or
 - (ii) the determination referred to in paragraph (c)(ii);
- (b) second, undertake an inquiry under section 23; and
- (c) third, either –
 - (i) make an application to the court under section 27; or
 - (ii) determine that it is not appropriate to make such an application.

(4) Subject to subsection (7), the Authority shall, against the name of a person named in the register of Insolvency Practitioners, enter each of the following circumstances –

- (a) that the person’s registration as an Insolvency Practitioner has been suspended under section 18;

- (b) that the person's registration as an Insolvency Practitioner has been cancelled under section 17 or has otherwise ended without being renewed;
- (c) that the person has been suspended or removed from professional practice by any professional body, or that the Authority has been advised by a professional body that the person has been suspended or removed from professional practice by any professional body;
- (d) that the person is the subject of a prohibition order made under section 27;
- (e) that the person is prohibited either under section 213 of the Companies Act, or by an order made under section 214 of the Companies Act, from being appointed or acting as an office holder;
- (f) that the person has ceased to practise as an Insolvency Practitioner;
- (g) that the person has died.

(5) For the purposes of paragraph (f) of subsection (4), a person who is appointed or acts as an office holder shall be deemed to be practising as an Insolvency Practitioner.

(6) Where an entry against a person's name has been made under subsection (4), and the Authority is satisfied that –

- (a) the corresponding circumstances no longer exist;
or
- (b) the entry was erroneous,

the Authority shall amend the register accordingly.

(7) Where a person has ceased to practise as an Insolvency Practitioner and a corresponding entry has been made against the person's name under Paragraph (f) of subsection (4), and

unless subsection (6) applies with respect to that entry, the Authority need not enter against the person's name any of the circumstances referred to in paragraphs (a), (b), (c), (d), (e) and (g) of that subsection.

(8) The extent to which, and the manner in which, the register of Insolvency Practitioners shall be made available to third parties for access, searching, statistical purposes and research purposes, shall be as may be prescribed.

20. (1) An Insolvency Practitioner shall maintain an appropriate insurance policy against the liability that the Insolvency Practitioner may incur in the course of exercising, performing and discharging its powers, functions and duties under this Act.

Insurance

(2) The Authority may, from time to time, issue guidelines relating to the requirements of an appropriate insurance policy for the purposes of subsection (1).

(3) An Insolvency Practitioner who fails to comply with subsection (1) commits an offence.

21. (1) In this section, "specified event" means each of such events as may be prescribed.

Notice of
specified
events

(2) An Insolvency Practitioner shall, in such manner as may be prescribed, give the Authority notice of the following events : –

- (a) the making of an order of the court under paragraph (a) of subsection (2) of section 264; paragraph (a) of subsection (2) of section 363 or paragraph (a) of subsection (2) of section 405 to comply with a duty, against the person;
- (b) the making of an order of the court under section 265, section 364 or section 406 against the person;
- (c) the making of a prohibition order under section 27 against the person;

- (d) the making of an order of the court under section 214 of the Companies Act against the person;
- (e) the suspension or removal of the person from professional practice by any professional body;
- (f) the removal of the person from office under section 254;
- (g) the removal of the person from office under section 255 or section 307; and
- (h) the occurrence of any other specified event.

(3) A notice under subsection (2) shall be given within five working days after –

- (a) the day on which the Insolvency Practitioner became aware of the occurrence of the event; or
- (b) if earlier, the day on which the Insolvency Practitioner could reasonably be expected to have become aware of the occurrence of the event.

(4) An Insolvency Practitioner who fails to comply with this section commits an offence.

Notice of
other events

22. An Insolvency Practitioner may send to the Authority a report specifying any matter that, in the opinion of the Insolvency Practitioner, should be brought to the notice of the Authority.

Inquiry into
conduct and
performance

23. (1) The Authority may inquire into the conduct or performance of an Insolvency Practitioner, or former Insolvency Practitioner, where it is permitted under section 19 or section 24 to do so.

(2) For the purposes of an inquiry under subsection (1), the Authority may by written notice request a person

who has, or is likely to have, knowledge of the conduct or performance of the Insolvency Practitioner, or former Insolvency Practitioner, to do any of the acts specified in subsection (3), if and to the extent reasonable.

(3) The acts referred to in subsection (2) are to –

- (a) attend on the Authority at such time and place as the Authority may request;
- (b) provide the Authority with such information about the conduct or performance of the Insolvency Practitioner, or former Insolvency Practitioner, as the Authority may request;
- (c) provide the Authority with such information about the affairs, business, property or financial circumstances of a debtor as the Authority may request;
- (d) be examined on oath by a representative of the Authority on any matter relating to the affairs, business, property or financial circumstances of a debtor, or the conduct and performance of the Insolvency Practitioner or former Insolvency Practitioner, under such evidentiary and other procedural rules as may be prescribed;
- (e) provide a declaration on oath or affirmation;
- (f) assist the Authority in its inquiry to the best of the person's ability.

(4) The Authority shall pay to a person referred to in paragraph (b) or (c) of subsection (3), reasonable travel and other expenses that are incurred in complying with a request made under subsection (3), on such scales as are established by the Authority.

(5) No suit, prosecution or any other legal or other proceeding including a disciplinary proceeding by any professional body or authority having jurisdiction in respect of professional conduct, shall lie against any person in respect of disclosure in good faith of information under this section.

(6) On the application of the Authority, the court may order a person who has failed to comply with a request made under this section to –

- (a) comply with the request; or
- (b) attend before the court and be examined on oath, under such evidentiary and other procedural rules as may be prescribed,

where it is satisfied that such compliance or examination, as the case may be is necessary for the performance by the Authority of one or more of the functions set out in section 4 and would not be unreasonably oppressive to the person

Disciplinary
action

24. (1) In this section, “disciplinary action” means –

- (a) the imposition, subject to such conditions, including as to the making of an application to the court, as may be prescribed, of disciplinary sanctions on such grounds and of such nature as may be prescribed;
- (b) the making of an application to the court for –
 - (i) the removal from office of an Insolvency Practitioner;
 - (ii) a prohibition order under section 27.

(2) Subject to subsection (3), where the Authority concludes, or determines that there are reasonable grounds to conclude, that an Insolvency Practitioner or former Insolvency Practitioner –

- (a) while registered as an Insolvency Practitioner, does not meet, does not continue to meet or has not continued to meet or has not met a condition imposed on the person's registration as an Insolvency Practitioner under section 15;
- (b) is contravening or has contravened a requirement under –
 - (i) this Act, any regulation, rules, standards, codes of conduct, guidelines or practice directions made thereunder;
 - (ii) any other written law; or
 - (iii) any order or direction of the court;
- (c) has been issued with an order of the court under paragraph (a) of subsection (2) of section 264, paragraph (a) of subsection (2) of section 363 or paragraph (a) of subsection (2) of section 405 to comply with a duty;
- (d) has been issued with an order of the court under section 265, section 364 or section 406;
- (e) is the subject of a prohibition order made under section 27;
- (f) is prohibited either under section 213 of the Companies Act, or by an order made under section 214 of the Companies Act, from being appointed or acting as an office holder; or
- (g) is failing or has failed in a material respect to comply with a direction of the Authority, the Authority may –

- (i) undertake an inquiry under section 23; and
- (ii) take such disciplinary action as may be necessary.

(3) With respect to a former Insolvency Practitioner, subsection (2) shall not apply to any matter that relates solely to a time more than six years before the Insolvency Practitioner ceased to practise as an Insolvency Practitioner.

(4) For the purposes of subsection (3), a person who performs the functions of an Insolvency Practitioner at any time, whether with or without being registered as such, shall be deemed to be practising as an Insolvency Practitioner at that time.

(5) Under subsection (2), the Authority may take one or more types of disciplinary action in relation to a single matter.

(6) With respect to the taking of disciplinary action under subsection (2), the Authority shall follow such procedure as may be prescribed, including as to –

- (a) giving the Insolvency Practitioner a prior opportunity to be heard on the matter; and
- (b) appeals.

Interpretation

25. For the purposes of this Chapter, references to the Authority shall, unless the context otherwise requires, include references to a committee thereof.

CHAPTER 4

INSTITUTIONAL ARRANGEMENTS: MISCELLANEOUS

Inducement to
be appointed as
administrator
or liquidator

26. (1) Subject to subsection (2), any person who gives or agrees or offers to give to any contributory or creditor of a company any gratification with a view to securing the

person's own appointment, or to securing or preventing the appointment of some other person, as the company's administrator or liquidator commits an offence.

(2) The negotiation or discussion in good faith of remuneration for acting as an administrator or liquidator shall not constitute a contravention of subsection (1).

27. (1) On the application of the Authority, the court shall make in relation to a person, a prohibition order for a period not exceeding five years, where the court is satisfied that a person meets the condition in subsection (2).

Prohibition
order

(2) The condition referred to in subsection (1) is that the person is unfit to be appointed or act as a key office holder by reason of –

(a) persistent failures to comply; or

(b) the seriousness of one or more failures to comply,

with one or more of the duties referred to in section 264, section 363 and section 405.

(3) A person to whom a prohibition order applies shall not be appointed or act as a key office holder.

(4) In making a prohibition order, the court may, as may be necessary –

(a) impose any term or condition; and

(b) make any other ancillary order.

(5) A copy of every prohibition order shall, within five working days after the making of the order, be sent by the court to the Authority.

(6) Where, on two or more occasions within the five years immediately preceding –

- (a) a court has made an order in respect of a person, under paragraph (a) of subsection (2) of section 264, paragraph (a) of subsection (2) of section 363 or paragraph (a) of subsection (2) of section 405 to comply with a duty; or
- (b) an application for an order to comply with a duty has been made in respect of a person under any of those sections referred to in paragraph (a), and in each case the person has complied with the applicable duty after the making of the application and before the hearing,

in the absence of special reasons to the contrary, is deemed to be evidence of persistent failures to comply by such person for the purposes of subsection (2)(a).

(7) Any person who fails to comply with a prohibition order commits an offence.

Appeals

28. With respect to any act or decision of the Authority under this Part an appeal shall lie to the District Court.

Acting when
not permitted
to do so

29. A person who is appointed or acts as an office holder at a time when the person is not permitted to do so commits an offence.

Interests
statement

30. (1) Interests statement signed by a person shall, in such level of detail as may be prescribed, disclose –

- (a) each circumstance, relationship or other fact or matter that gives rise to, or could reasonably be perceived as giving rise to, a conflict of interest for the person, in relation to the role in connection with which the interests statement is required;
- (b) the nature of each such conflict of interest; and

- (c) how the person intends to manage each such conflict of interest.

(2) Before a person signs an interest statement, the person shall make the inquiries that are reasonably necessary for ensuring that the interests statement is complete.

(3) Any person who signs an interests statement, where –

- (a) the interests statement is false or misleading in a material particular; and
- (b) the person either –
 - (i) knows that the interests statement is false or misleading in a material particular; or
 - (ii) omits to disclose any fact or matter, knowing that the omission makes the interests statement false or misleading in a material particular,

commits of an offence.

31. A statement of pre-administration costs, if prepared, shall include –

Statement
of pre-
administration
costs

- (a) details of the work done for which, and any agreements under which, the costs, charges and expenses were incurred and the remuneration was charged;
- (b) an explanation of why the work –
 - (i) was done before the administration of the company commenced; and
 - (ii) was with a view to furthering the achievement of the objective referred to in paragraph (d) of section 178;
- (c) the unpaid amounts of the pre-administration costs, setting out separately –

- (i) costs, charges and expenses incurred; and
- (ii) remuneration charged;
- (d) the previously paid amounts (if any) of the pre-administration costs, setting out separately –
 - (i) costs, charges and expenses incurred; and
 - (ii) remuneration charged; and
- (e) such other information as may be prescribed.

PART II

Personal Insolvency : Principles

Responsibility
of a debtor
under
Personal
Insolvency
Procedures

32. (1) Subject to the provisions of this Act, a debtor who is a party to a Personal Insolvency Procedure is under the obligations specified in this section.

(2) A debtor who participates in any Personal Insolvency Procedure is under an obligation-

- (a) to provide to a personal insolvency official and to the court, in accordance with section 33 and any other provision of this Act, a full statement of the debtor's financial affairs, including the disclosure of ones income, property and liabilities;
- (b) to supply to the relevant personal insolvency official any such information as the official may require regarding the debtor's expenditure and sources of income; and
- (c) to provide any records, accounts and documents reasonably required by the personal insolvency official.

(3) A debtor who participates in any Personal Insolvency Procedure shall cooperate fully in the procedure, and shall comply with any reasonable request from the personal insolvency official to provide assistance, documents and information necessary for-

- (a) the application of the procedure to the debtor's case; or
- (b) the carrying out of the personal insolvency official's functions.

(4) Where at any time after the commencement of a Personal Insolvency Procedure, other than in the normal course of business carried on by the debtor or in the normal family affairs of the debtor –

- (a) any property is acquired by the debtor; or
- (b) there is any other material and unexpected change in the debtor's financial circumstances,

the debtor shall, as soon as is reasonably practicable, give the relevant personal insolvency official written notice of the property or, as the case may be, of the increase in the debtor's income.

(5) Where at any time after the commencement of a Personal Insolvency Procedure there is a change in the debtor's address, employment, name or other material personal information, the debtor shall, as soon as is reasonably practicable, give the relevant personal insolvency official written notice of the change of details.

(6) A debtor who is a party to a Personal Insolvency Procedure shall inform the relevant personal insolvency official, as soon as reasonably practicable, after becoming aware of any material inaccuracy or omission in the statement of the debtor's financial affairs.

(7) A debtor must take all the steps in relation to the debtor's property and income that are -

- (a) required under this Act;
- (b) prescribed;
- (c) directed to be done by the court by an order made in reference to a particular insolvency procedure; or
- (d) reasonably required by the relevant personal insolvency official.

(8) A debtor who is a party to a Personal Insolvency Procedure-

- (a) shall not, in respect of included debts, make to any creditor any additional payments in money or in kind, above a value of ten thousand rupees or such higher value as may be prescribed, other than those made through a personal insolvency official under the terms of the procedure; and
- (b) shall not transfer, lease, grant security over, or otherwise dispose of any interest in property above a value of ten thousand rupees or such higher value as may be prescribed, other than through the personal insolvency official under the terms of the procedure.

(9) A debtor who is a party to a personal insolvency procedure shall not, either alone or with any other person, obtain credit in an amount of more than fifty thousand or such higher value as may be prescribed, from any person without informing that person that the debtor is a party to a personal insolvency procedure.

(10) A debtor who is a party to a Debt Rehabilitation Order or a Bankruptcy Order shall not leave Sri Lanka

without first obtaining the permission of the court, the court may grant such permission on such terms and conditions as are necessary.

33. (1) Subject to any additional details as may be prescribed, and unless otherwise required by a provision of this Act or an order of court, a statement of a debtor's financial affairs for the purposes of Parts III, IV, V, VI, VIII and XI shall include -

Statements of
the debtor's
financial
affairs

- (a) a list of creditors;
- (b) a schedule containing particulars of the debtor's property;
- (c) a schedule containing the debts and other liabilities of the debtor;
- (d) a schedule of current income and current expenditure;
- (e) a statement of the amount of monthly surplus income, itemised to show how the amount is calculated;
- (f) a statement disclosing any reasonably anticipated increase in income or expenditures over the twelve month period following the date of the making of an application, or preparation of a proposal, under a procedure under this Act;
- (g) any guarantee given by the debtor in respect of the debts of another person; and
- (h) the security, if any, held by each creditor in respect of its debt.

(2) The statement of financial affairs shall be in the prescribed form, supported with an affidavit.

(3) Where a provision of this Act requires the preparation of a statement of a debtor's affairs in relation to an application, petition, proposal, or procedure under Parts III, IV, V, VI, VIII and XI such statement shall show the required details as at a date not earlier than ninety days before-

- (a) the making of the application, petition, or proposal; or
- (b) the commencement of the procedure.

Protected
Property

34. (1) The categories of property of a debtor listed under subsection (4) are protected property, for the purposes of-

- (a) determining the debtor's eligibility for a Debt Rehabilitation Order under section 66;
- (b) establishing terms of a Debt Restructuring Arrangement under section 46; and
- (c) determining the composition of the Bankruptcy Estate under section 115.

(2) Protected property under this section-

- (a) shall not form part of the Bankruptcy Estate under section 115;
- (b) shall not constitute after-acquired property under section 117; and
- (c) shall be excluded from the calculation of available property under section 46.

(3) Under section 46, the terms of Debt Restructuring Arrangement shall not provide for the sale of any protected property of the debtor, for the benefit of creditors or intermediaries.

(4) In addition to the protection of a debtor's reasonable income under section 36, the categories of protected property are —

- (a) the debtor's necessary household furniture and effects, including clothing, for the debtor and the debtor's relatives and dependants;
- (b) the debtor's necessary tools of trade, business, and agriculture;
- (c) where the debtor is engaged in agriculture, such quantity of agricultural land as may be necessary for providing for the needs in support of the debtor and his or her dependants;
- (d) professional instruments and library necessary for the carrying on of the debtor's profession or business, of such value as may be prescribed;
- (e) books of accounts;
- (f) mere rights to sue for damages;
- (g) any right of personal service;
- (h) any expectancy of succession by survivorship or other merely contingent or possible right of interest;
- (i) a right to future maintenance and all maintenance, alimony and costs ordered in matrimonial suits or maintenance actions;
- (j) any house or other dwelling, together with such extent of land appurtenant thereto as the court may consider necessary for its enjoyment, which is not mortgaged as security for the payment of the whole or part of the sum claimed in a personal insolvency procedure which —

- (i) is the actual residence of the debtor at the time of the procedure; and
- (ii) has been such residence from the time of the initiation of the procedure;
- (k) the amount lying to the credit of an employee's individual account, any other provident fund, employee trust fund or pension established for the benefit of employees in any employment, to the extent specified in section 35;
- (l) the debtor's tenancy under a short-term residential rental accommodation agreement;
- (m) property held by a debtor on trust for any other person; and
- (n) such other categories of property as may be prescribed.

(5) Where a house or other dwelling, which is the actual residence of the debtor, is mortgaged as security for the payment of a sum claimed by a secured creditor in a personal insolvency procedure —

- (a) the interest of the secured creditor in the house or dwelling is limited to the amount of indebtedness outstanding in favour of the secured creditor; and
- (b) any remaining interest of the debtor in the house or dwelling, where the value of the house or dwelling exceeds the amount of indebtedness outstanding in favour of the secured creditor,

shall constitute protected property.

(6) Where a debtor has acquired possession of an item falling within paragraphs (a) to (d) of subsection (4) by means of a hire-purchase agreement, lease agreement or

other form of finance agreement, the interest of the debtor under the hire-purchase agreement, lease agreement, or other form of finance agreement, shall constitute protected property, and shall not be available for the benefit of general creditors.

(7) Under this Act, it shall not be appropriate to contemplate the potential sale of any protected property of the debtor for the purposes of determining whether the debtor is unable to pay his or her debts as they become due.

(8) In a Personal Insolvency Procedure, “insolvency-related term” is a provision of an agreement for the supply of any essential goods or services to a debtor under which –

- (a) the agreement or the supply would terminate, or any other thing would take place; or
- (b) the supplier would be entitled to terminate the agreement or the supply, or to do any other thing,

due to the commencement of the personal insolvency procedure.

35. (1) Contributions, entitlements, or amounts payable under any provident fund, employees trust fund, pension established for the benefit of employees in any employment or statutory gratuity —

- (a) shall constitute protected property; and
- (b) shall not constitute after-acquired property under this Act.

Contributions
and
entitlements
under
provident
funds,
employees
trust funds,
pensions
and statutory
gratuities

(2) For the purposes of this Act, amounts paid in respect of a debtor by an employer of the debtor under any provident fund, employees trust fund or pension established for the benefit of employees, or statutory gratuity —

(a) shall not constitute after-acquired property under this Act; and

(b) shall not constitute income of the debtor.

(3) Where a debtor who is a party to a personal insolvency procedure is in receipt of payments under any provident fund, employees trust fund or pension established for the benefit of employees, these payments shall not constitute after-acquired property, but shall constitute income for the purposes of —

(a) establishing terms of a Debt Restructuring Arrangement under section 47; and

(b) the making of a Bankruptcy Debt Repayment Order or Bankruptcy Debt Repayment Agreement under section 125 and section 126, respectively.

(4) Nothing in this section shall remove the obligation of a debtor under a personal insolvency procedure to make full disclosure of property in a statement of the debtor's financial affairs.

Protection of a
reasonable
income

36. (1) Under any personal insolvency procedure, a debtor shall not be required to make contributions from the protected income, which for the purposes of this Act, means the income of a debtor necessary for meeting the reasonable needs of the debtor and dependants of the debtor.

(2) For the purposes of this Act, and subject to subsection (6), the following amounts shall constitute a debtor's protected income:-

(a) a personal monthly allowance of the debtor equal to the amount specified in subsection (2) of section 52 and paragraph 2(a) of the Fifth Schedule of the Inland Revenue Act, No. 24 of 2017; and

- (b) where the debtor has dependants, an additional monthly allowance equal to the amount specified in paragraph (a) in respect of each dependant of the debtor, up to a maximum of four dependants.

(3) For the purposes of this Act, and subject to subsection (5), the debtor's monthly surplus income is, unless under exceptional circumstances, the amount by which a debtor's monthly income exceeds the debtor's protected income.

(4) Where exceptional circumstances particular to the debtor and the debtor's dependants mean that their reasonable needs are greater than would be the case in the absence of such exceptional circumstances —

- (a) the debtor's protected income may exceed the amounts specified in subsection (2); but
- (b) the debtor's protected income may only exceed the amounts specified in subsection (3) to the extent necessary to meet the reasonable needs of the debtor and debtor's dependants.

(5) For the purposes of this Act, the debtor's income comprises every payment in the nature of income which is from time to time made to the debtor or to which the debtor from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment, and, subject to section 35 any payment under a provident fund, employees trust fund or pension established for the benefit of employees.

(6) The Authority may from time to time issue guidelines on the calculation of the income necessary for meeting the reasonable needs of the debtor and the debtor's dependants in the circumstances specified in subsection (4).

37. (1) Unless otherwise provided in this Act, an included debt means a debt which meets the conditions of subsection (2), and which is not an excluded debt.

Included and
Excluded
Debts

(2) The category of included debts includes all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the-

- (a) Debt Protection Moratorium Order;
- (b) Order confirming the coming into effect of a Debt Restructuring Arrangement;
- (c) Debt Rehabilitation Order; or
- (d) Bankruptcy Order.

(3) The category of included debts also includes any debt or liability to which the debtor became subject to after the making of any of the Orders specified in subsection (2), by reason of any obligation incurred by the debtor before the making of any of the Orders specified in subsection (2).

(4) The following debts shall be excluded debts:-

- (a) any debt or liability incurred by fraud or fraudulent breach of trust to which the debtor was a party;
- (b) any debt or liability for which the debtor has obtained forbearance through fraud to which the bankrupt was a party;
- (c) any obligation to pay maintenance or alimony, and all maintenance, alimony and costs ordered in matrimonial suits or maintenance actions;
- (d) any liability in respect of a fine imposed for an offence;
- (e) a liability to pay damages to any person in respect of a delict committed by the debtor.

(5) Excluded debts shall not be provable in Bankruptcy.

(6) For the purposes of determining a debtor's eligibility for a Debt Rehabilitation Order under section 66, the calculation of the amount of the debtor's liability under the total debts shall not include excluded debts.

(7) The Moratorium under a Debt Protection Moratorium Order under section 40 shall not apply to an excluded debt.

(8) A Debt Restructuring Arrangement shall not apply to an excluded debt, except where the relevant creditor consents to the inclusion of its debt under the Arrangement.

(9) A Debt Rehabilitation Order shall not apply to an excluded debt.

(10) The discharge under sections 73 and 138 shall not discharge the debtor from liability in respect of excluded debts.

(11) The completion of a Debt Restructuring Arrangement under section 60 does not release the debtor from liability under an excluded debt, except where the relevant creditor has consented to the discharge of its debt under the terms of the Arrangement.

PART III

Debt Protection Moratorium Order

38. (1) Subject to this Part, a debtor who intends to-

Debt
Protection
Application

- (a) prepare a proposal for a Debt Restructuring Arrangement;
- (b) apply for a Debt Rehabilitation Order; or
- (c) apply for a Bankruptcy Order,

may present to the court a Debt Protection Application, in a form which complies with subsections (2) and (3), and any requirements as may be prescribed.

(2) The debt protection application of the debtor shall contain the following information:-

- (a) the full name, date of birth, and residential address of the debtor;
- (b) any trading names or any registered business names and addresses of any business carried on by the debtor;
- (c) consent of the debtor in writing-
 - (i) to the making of any enquiries relating to the debtor by the Official Receiver; and
 - (ii) to the disclosure and processing of personal data of the debtor by the Official Receiver, to the extent necessary, and in compliance with the terms of the Data Protection Act, No. 9 of 2022.

(3) The application shall include the following information to the extent that the information is known by the debtor, and is relevant to the case:-

- (a) details of the creditors of the debtor and the relevant debts owed to each creditor;
- (b) details as to any security held by any creditor, and the nature of the security held by a creditor;
- (c) details of any debt collection agent or other third party instructed by a creditor of the debtor for the purposes of collection or enforcement of a debt; and
- (d) details of any advisor, agent, or representative who has been instructed by the debtor to act on his behalf.

(4) A debtor, in making the Debt Protection Application, shall take reasonable care to ensure the accuracy of any

information provided, and shall not deliberately withhold relevant information from the application.

39. (1) On receipt of a debt protection application, the court must consider whether to make a Debt Protection Moratorium Order in relation to the debtor applicant.

Criteria for
making Debt
Protection
Moratorium
Order

(2) In considering a debt protection application, the court may-

- (a) request that the Official Receiver make such enquiries as it considers necessary to assist the court in considering whether the debtor meets the eligibility criteria specified in subsection (4); and
- (b) stay consideration of the application until the Official Receiver has received satisfactory answers to such enquiries.

(3) In considering a debt protection application, the court is required to presume that the criteria in subsection (4) are met if it appears to the court to be the case at the application date, from the information supplied in the application, and the court has no reason to believe that the information supplied is incomplete or inaccurate.

(4) A debtor will be eligible for a Debt Protection Moratorium Order only if the debtor –

- (a) is unable, or is unlikely to be able, to pay some or all of the debts as they become due;
- (b) is resident in Sri Lanka or at any time within three years before the date of the Debt Protection Application –
 - (i) was a resident, or had a place of residence in Sri Lanka; or

- (ii) carried on business in Sri Lanka;
- (c) is not currently a bankrupt debtor;
- (d) is not subject to a Debt Restructuring Arrangement under Part IV;
- (e) has not been subject to a Debt Rehabilitation Order under Part V within twelve months prior to the date of the Debt Protection Application;
- (f) has not been subject to a Bankruptcy Order under Part VI within five years prior to the date of the Debt Protection Application;
- (g) has not been subject to a Debt Protection Moratorium Order under Part III within twelve months prior to the date of the Debt Protection Application.

(5) The court, having considered a debt protection application, must issue a Debt Protection Moratorium Order in relation to the debtor if it appears to the court that-

- (a) the debtor meets the eligibility criteria in subsection (4);
- (b) the court has no reason to believe that the debtor has made any material false representation or omission in making the application; and
- (c) the debts to be covered by the Debt Protection Moratorium Order are included debts in accordance with section 37.

(6) On the making a Debt Protection Moratorium Order, the court shall direct the Official Receiver to record in the Personal Insolvency Register, in addition to such other details as may be prescribed -

- (a) details of the debtor;
- (b) the date of issue of the Order;
- (c) the date on which the Moratorium period is due to cease;
- (d) any extension of the Moratorium period, including the date on which an extended Moratorium period is due to cease.

(7) Having considered a debt protection application, the court must refuse an application to make a Debt Protection Moratorium Order in relation to the debtor if the court considers that-

- (a) the debtor does not meet the eligibility criteria in subsection (4);
- (b) the debts to be covered by the Debt Protection Moratorium Order are not included debts for the purposes of section 37; or
- (c) the debtor has made any material false representation or omission in making the application or on supplying any accompanying information.

40. (1) A Moratorium commences on the date of a Debt Protection Moratorium Order in relation to each included debt owed by the debtor.

Effect of
a Debt
Protection
Moratorium
Order

(2) Subject to the provisions of subsection (3), during the Moratorium period, a creditor of the debtor to whom an included debt is owed-

- (a) shall not have any remedy in respect of the debt; and
- (b) shall not take any actions to-

- (i) require a debtor to pay interest that accrues on an included debt during a moratorium period;
- (ii) require a debtor to pay fees, penalties or charges in relation to an included debt that accrue during a moratorium period;
- (iii) require an accelerated payment by the debtor to the creditor;
- (iv) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties or charges as a default or breach by the debtor under the agreement between the creditor and the debtor;
- (v) report to the Credit Reference Information Bureau any default on the part of the debtor in making payments which would have fallen due during the moratorium period, but for the existence of the Debt Protection Moratorium Order;
- (vi) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor;
- (vii) initiate or continue any legal proceedings against the debtor in relation to an included debt;
- (viii) collect, secure, recover or demand payment of an included debt;
- (ix) execute or enforce a judgment or an order of a court or tribunal against the debtor;
- (x) obtain a warrant;

- (xi) recover goods in the possession of the debtor;
- (xii) enforce security held in respect of an included debt;
- (xiii) obtain possession of a premises in which the debtor is residing under a tenancy agreement into which the debtor has entered with a relevant creditor;
- (xiv) take any of the actions in this subsection against another person who is jointly liable with the debtor to whom the Moratorium relates;
- (xv) take any of the actions in this subsection against another person who has guaranteed the debts of the debtor to whom the Moratorium relates; or
- (xvi) take possession of, or otherwise recover, any goods of the type specified in section 34 that are used by or in the possession of the debtor, where the creditor is the owner or lessor of the goods;
- (xvii) instruct an agent to take any of the actions mentioned in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv) or (xvi).

(3) Notwithstanding the provisions of subsection (2) the court may, while a Debt Protection Moratorium remains in force, upon application by a creditor, allow a creditor to take an action referred to in sub-paragraphs (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi) or (xvii) of paragraph (b) of subsection (2) if the court deems that —

- (a) it is reasonable, due to exceptional circumstances, to allow the creditor to take action; and

- (b) the action may not -
 - (i) cause undue detriment to the debtor to whom the Moratorium relates;
 - (ii) unfairly prejudice any other creditor; or
 - (iii) significantly undermine the protections of the moratorium.

(4) Nothing in this section shall be construed as preventing the commencement or continuation of any criminal proceedings against a debtor.

(5) Any action taken contrary to this section shall be *null and void*.

(6) Nothing in this section shall affect a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor where the execution or other legal process or distress was completed before the making of the Debt Protection Moratorium Order, where -

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(7) After the end of the Moratorium period, neither a creditor nor the agent of the creditor is entitled to-

- (a) treat the non-payment during the moratorium period by the insolvent individual of interest, fees, penalties or charges as a default or breach

by the debtor under the agreement between the creditor and the debtor;

- (b) record in the Credit Reference Information Bureau any non-payment during the moratorium period by the debtor of interest, fees, penalties or charges; or
- (c) require a debtor to pay fees, penalties, charges, or accelerated payments referred to in sub-paragraph (ii) or (iii) of paragraph (b) of subsection (2) that accrued during the moratorium period.

(8) Subject to subsection (7), and where the debtor has not entered a personal insolvency procedure, after the end of the moratorium period, a creditor or an agent of the creditor shall be entitled to require a debtor to pay all other payments that would have fallen due during the moratorium period, but for the existence of the Debt Protection Moratorium Order.

41. (1) A Debt Protection Moratorium commences when a court makes a Debt Protection Moratorium Order.

Duration
of a Debt
Protection
Moratorium
Order

(2) Subject to subsection (3), a Debt Protection Moratorium continues for sixty days from the date on which it commenced under subsection (1), unless —

- (a) the Moratorium is cancelled in accordance with section 77;
- (b) the Moratorium ends with the death of the debtor under subsection (5); or
- (c) the Moratorium ends under subsection (6) with the making of a Personal Insolvency Order.

(3) On an application made by the debtor, a court may extend the Moratorium period by an additional period not exceeding ninety days, where—

- (a) the court is satisfied that the debtor has acted in good faith and with reasonable expedition; and
- (b) the court is satisfied that the extension of the moratorium period will serve the objectives of this Act, including the debtor being allowed time to prepare an application for a Debt Restructuring Arrangement under Part IV.

(4) A court may extend the Moratorium period under subsection (3) no more than four times, and for a total period not exceeding three hundred and sixty days.

(5) Where a debtor dies during a Moratorium period, the Moratorium ends on the day after the day on which the debtor died.

(6) Where a Personal Insolvency Order is made in respect of the debtor, the Moratorium ends on the date of the Personal Insolvency Order.

(7) Where a Moratorium period ends in accordance with subsections (2), (5) or (6), the Official Receiver shall cause all information relating to the Moratorium to be removed from the Personal Insolvency Register.

Obligations
of debtors
during a Debt
Protection
Moratorium

42. (1) During a Debt Protection Moratorium, a debtor shall-

- (a) inform the Official Receiver if there is any material change in the debtor's circumstances or financial position;
- (b) make any payment due in relation to an ongoing liability as it falls due to be paid during the Moratorium period;
- (c) not obtain additional credit, either alone or jointly with any other person, that at any one

point in time collectively exceeds one hundred thousand rupees, or such higher amount as may be prescribed;

- (d) not dispose of any assets other than in the normal course of business carried on by the debtor or in the normal family affairs of the debtor; and
- (e) co-operate with the Official Receiver in a reasonable manner.

(2) In addition to the obligations specified in subsection (1), during a Debt Protection Moratorium, a debtor is subject to any relevant obligations of the debtor's specified in section 32 which may reasonably apply to the circumstances of a Debt Protection Moratorium.

(3) Any action contrary to subsection (1) shall be *null and void*.

43. (1) A creditor who receives notification of a Debt Protection Moratorium under this Part may apply to the court to object to the Moratorium.

Creditor
Objection
to Debt
Protection
Moratorium

(2) A creditor's application to object to a Debt Protection Moratorium under subsection (1) shall be based on one or more of the following grounds, namely that-

- (a) the debtor does not meet the eligibility criteria in section 39;
- (b) the debts to be covered by the Debt Protection Moratorium are not included debts for the purposes of section 37;
- (c) the debtor has made a material false representation or omission in making the application or on supplying any accompanying information;

- (d) the debtor has failed, in a material manner, to comply with the obligations specified in section 32; or
- (e) the Debt Protection Moratorium Order causes irreparable harm to the interests of the creditor.

(3) A creditor's application to court to object to a Debt Protection Moratorium must be made within a period of ninety days beginning on the day on which the Debt Protection Moratorium commences.

(4) A creditor must provide notice to the debtor of an application to object to a Debt Protection Moratorium, including the grounds on which the application is based.

(5) Where on an application under this section the court is satisfied as to any of the grounds specified in subsection (2), the court may order either or both of the following, namely : -

- (a) make an order directing that the Debt Protection Moratorium shall not apply in whole or in part to the creditor who made the application to court, where in doing so it would not unfairly prejudice any other creditor;
- (b) make an order cancelling the Debt Protection Moratorium in respect of any other debtor or creditor to which the Moratorium applies.

(6) Where a court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued during the Moratorium period in respect of a debt to which the Moratorium applies.

(7) In any case where a court makes an order under subsections (5) or (6), the court shall give written notice to the debtor, the Official Receiver, and any creditors to whom the order under subsection (5) applies.

(8) Where a court gives written notice to the Official Receiver under subsection (7), the Official Receiver shall, within a period of fourteen days-

- (a) cause an entry to be made in the Personal Insolvency Register; and
- (b) send a notification of the court order made under subsection (5), and any requirements made under subsection (6), to any affected creditor.

PART IV

Debt Restructuring Arrangements

44. (1) This Part establishes a Debt Restructuring Arrangement procedure, under which a debtor, with the assistance of a personal insolvency proposer or a personal insolvency administrator, can negotiate a flexible repayment arrangement with the debtor's creditors, in or towards the satisfaction of the debtor's outstanding liabilities.

Debt
Restructuring
Arrangements

(2) The Debt Restructuring Arrangement procedure aims to enable debtors who hold realisable assets and income to obtain a discharge of debt and economic rehabilitation as an alternative to bankruptcy, while ensuring that such debtors make a reasonable contribution to the repayment of their debts.

(3) The Debt Restructuring Arrangement procedure aims to enable the rehabilitation and rescue of sole proprietorships, partnerships and other unincorporated businesses through the restructuring of debts *via* negotiation between debtors and creditors.

45. (1) Subject to the provisions of this Act, a debtor who satisfies the eligibility criteria specified in section 46 may make a proposal to all creditors for a Debt Restructuring Arrangement for the satisfaction or restructuring of the debtor's debts.

Debt
Restructuring
Arrangements:
General
Conditions

(2) A proposal for a Debt Restructuring Arrangement may be made and submitted by a debtor, or on behalf of a debtor by a personal insolvency proposer, in accordance with the provisions of this Part and any provisions as may be prescribed.

(3) A personal insolvency proposer may also act as a personal insolvency administrator, after the coming into effect of a Debt Restructuring Arrangement.

(4) In accordance with section 62 and section 63 rules may be made for the regulation and performance of the functions of personal insolvency proposers and personal insolvency administrators under this Part.

(5) Two or more proposals for a Debt Restructuring Arrangement, relating to two or more debtors, may be dealt with as one proposal where —

- (a) the personal insolvency proposer considers that they could reasonably be dealt with together because of the financial relationship of the debtors involved; and
- (b) the terms of each of the proposal specify details of how the Arrangements should be administered together, including—
 - (i) the treatment of joint and individual assets and the treatment of joint and individual debts;
 - (ii) whether the approval of each of the Arrangement is to be contingent on the approval of another Arrangement;
 - (iii) the effect of the failure or early termination of one Arrangement on any other Arrangement; and

- (iv) how any joint payments, made by two or more debtors, should be apportioned between the creditors.

46. A debtor shall be eligible for a Debt Restructuring Arrangement when such debtor meets all of the following criteria:-

Debt
Restructuring
Arrangements:
Eligibility
Criteria

- (a) the debtor is unable, or is likely to be unable to pay some or all of his or her debts as they become due;
- (b) the debtor is resident in Sri Lanka; or at any time within three years before the date of the making of a proposal for a Debt Restructuring Arrangement-
 - (i) was ordinarily resident, or had a place of residence in Sri Lanka; or
 - (ii) carried on business in Sri Lanka;
- (c) the debtor is not currently a bankrupt debtor;
- (d) is not subject to a Debt Rehabilitation Order under Part V.

47. (1) A Debt Restructuring Arrangement must authorise a person, firm, or body to act as a personal insolvency administrator in relation to the arrangement.

Debt
Restructuring
Arrangements:
Mandatory
Provisions

(2) A Debt Restructuring Arrangement may authorise or require the personal insolvency administrator to —

- (a) carry on the debtor's business, or trade on the debtor's behalf or in the debtor's name;
- (b) realise the assets of the debtor; or
- (c) collect, administer or distribute any funds of the debtor.

(3) A Debt Restructuring Arrangement shall not provide for the debtor to make payments under the arrangement, in respect of included debts, for a period of a longer duration than —

(a) three years; or

(b) if the amount of the debtor's included debts exceeds Ten million rupees, seven years.

(4) A Debt Restructuring Arrangement shall provide for the payment, before any other debts are paid, of the fees and expenses of the personal insolvency proposer and personal insolvency administrator, that are properly incurred in respect of the Arrangement.

(5) For the purposes of subsection (4) and the Fourth Schedule the charges incurred by a personal insolvency proposer or a personal insolvency administrator for the supply of an essential good or service, are an expense of the Arrangement.

(6) A Debt Restructuring Arrangement shall not require the debtor to sell or dispose off any protected property as specified in section 34.

(7) In accordance with section 36, a Debt Restructuring Arrangement-

(a) shall provide for a debtor to retain sufficient income necessary for meeting the reasonable needs of the debtor and the debtors' dependants; and

(b) shall not require the debtor to make payments from the debtor's protected income.

(8) A Debt Restructuring Arrangement shall provide for the circumstances relating to the debtor be reviewed by the

personal insolvency administrator at regular intervals, not exceeding intervals of twelve months.

(9) Notwithstanding subsection (3), a Debt Restructuring Arrangement may provide for the continuance of payments, after the completion of the Arrangement under section 60 on any debt on which the last payment is due, under the original terms of the debt, after the time of completion of the Arrangement under section 60.

(10) A Debt Restructuring Arrangement shall not provide for a preferential claim to be paid otherwise than in priority to-

- (a) a preferential claim ranking behind that preferential claim; or
- (b) a claim that is not a preferential claim,

unless the holder of the preferential claim gives consent in writing to a different treatment of such claim.

48. (1) Without limiting the ability of parties to agree to the terms of a Debt Restructuring Arrangement, other than when provided under the provisions of this Part, an Arrangement may include terms providing for the satisfaction or restructuring of both unsecured and secured debts.

Debt
Restructuring
Arrangements:
Secured
Creditors
and Property
Rights

(2) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may provide for the treatment of any property that is subject to a security, which may include-

- (a) the sale or disposition of the property that is subject to a security;
- (b) the surrender of the property to the debtor; or

- (c) the retention by the secured creditor of the security.

(3) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may include terms -

- (a) modifying the rights of a secured creditor; and
- (b) providing that a secured creditor will not realise its security while the arrangement is in force.

(4) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may include terms providing for the reduction of the principal sum due in respect of a secured debt, only where the Arrangement specifies that the amount of the reduced principal sum is not less than the value of the security.

(5) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may provide for -

- (a) the curing, within a reasonable time, of any default; and
- (b) maintenance of payments while the Arrangement is in effect,

on any secured debt on which the last payment is due after the time of completion of the Arrangement under section 60.

(6) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may provide for the —

- (a) curing of any default within a reasonable time; and
- (b) maintenance of rent payments while the Arrangement is in effect arising under a tenancy

agreement into which the debtor has entered with a relevant creditor.

(7) Subject to the rules on creditors' approval of a debtor's proposal under section 52, a Debt Restructuring Arrangement may provide for the -

- (a) curing of any default within a reasonable time; and
- (b) maintenance of instalment payments while the Arrangement is in effect arising under an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods.

49. (1) Where a debtor wishes to make a proposal for a Debt Restructuring Arrangement, such debtor shall appoint a person, firm or body, to act as a personal insolvency proposer.

Debt
Restructuring
Arrangements:
Appointments
of personal
insolvency
proposer

(2) If the debtor and the personal insolvency proposer so agree, the person, firm or body appointed to act as a personal insolvency proposer may also act as a personal insolvency administrator in respect of the proposed Debt Restructuring Arrangement under section 47.

(3) On being appointed under subsections (1) and (2), the personal insolvency proposer shall —

- (a) confirm in writing to the debtor that the personal insolvency proposer has consented to act in the role of personal insolvency proposer in respect of the debtor's Debt Restructuring Arrangement proposal;
- (b) if such proposer consents to act as personal insolvency administrator on the coming into effect of the Debt Restructuring Arrangement, confirm such consent in writing to the debtor; and

- (c) give notice to the Official Receiver of such appointment to act as a personal insolvency proposer, and, where relevant, a personal insolvency administrator.

(4) A personal insolvency proposer who agrees to assist a debtor in preparing a Debt Restructuring Arrangement shall —

- (a) make such reasonable enquiries into the debtor's property and financial affairs so as to be able to assess with reasonable accuracy the debtor's financial situation; and
- (b) prepare a Debt Restructuring Arrangement in the manner specified by this Part, and in such form as may be prescribed.

(5) For the purpose of enabling the personal insolvency proposer to assist in the preparation of a proposal for a Debt Restructuring Arrangement, the debtor shall submit to the personal insolvency proposer a statement disclosing fully, to the best of his or her knowledge, all of the debtor's financial affairs, in accordance with section 33.

(6) A personal insolvency proposer may be required, on the proposer's appointment, to provide certain information or advice to the debtor regarding the appropriateness of a Debt Restructuring Arrangement as may be prescribed or may be contained in rules made by the Authority.

(7) A personal insolvency proposer may be required to perform certain actions in assisting a debtor in the preparation and submission of a proposal for a Debt Restructuring Arrangement as may be prescribed or may be contained in rules made by the Authority.

Debt
Restructuring
Arrangements:
Preparation
of Debtor
Proposal

50. (1) A debtor who meets the criteria in section 46 may prepare, with the assistance of a personal insolvency proposer, a proposal for a Debt Restructuring Arrangement.

(2) The form of a proposal for a Debt Restructuring Arrangement may be prescribed.

(3) The proposal for a Debt Restructuring Arrangement shall —

- (a) be signed by the debtor;
- (b) have endorsed on it the name of —
 - (i) the person, firm or body who is acting as a personal insolvency proposer; and
 - (ii) the person, firm or body who is willing to act as a personal insolvency administrator on the coming into effect of the Debt Restructuring Arrangement.

(4) The proposal for a Debt Restructuring Arrangement shall include a statement of the personal insolvency proposer confirming that the personal insolvency proposer is of the opinion that —

- (a) the debtor satisfies the eligibility requirements of section 46;
- (b) to the best of the personal insolvency proposer's knowledge, the information contained in the debtor's statement of financial affairs is complete and accurate;
- (c) the proposal has a reasonable prospect of being approved and implemented; and
- (d) the proposal offers a reasonable means of facilitating the economic rehabilitation of the debtor while allowing fair contributions to creditors from the debtor's available resources.

(5) The proposal for a Debt Restructuring Arrangement shall include a statement of the debtor's financial affairs, and such other requirements as may be prescribed.

(6) The statement of the debtor's financial affairs, as required by subsection (5), shall be in accordance with section 94 and any regulations made thereunder.

(7) The proposal for a Debt Restructuring Arrangement shall include a statement of the debtor's consent to —

- (a) the Official Receiver making such enquiries as it considers necessary to determine whether the debtor meets the eligibility criteria specified in section 46;
- (b) the postponement of the consideration of the Debt Restructuring Arrangement proposal by the Official Receiver until the Official Receiver has received satisfactory answers to such enquiries;
- (c) the disclosure by the Official Receiver of the personal data of the debtor to creditors and other third parties, to the extent necessary for the making and consideration of a Debt Rehabilitation Order application; and
- (d) the disclosure to the Official Receiver, by creditors, government agencies or any other relevant third parties, of personal data of the debtor, to the extent necessary for the making and consideration of a Debt Rehabilitation Order application.

(8) The proposal for a Debt Restructuring Arrangement shall include a statement of the debtor's acknowledgement that, on making a proposal for an Arrangement, the debtor becomes subject to any relevant obligations of debtors specified in section 32 that may reasonably apply to the

circumstances of a proposal for a Debt Restructuring Arrangement.

(9) On the preparation by the debtor with the assistance of the personal insolvency proposer, of a proposal that satisfies the requirements of this section, the personal insolvency proposer shall submit the proposal to the Official Receiver.

51. (1) The personal insolvency proposer shall seek a decision from the debtor's creditors as to whether they approve the proposal for a Debt Restructuring Arrangement. Debt Restructuring Arrangement: Negotiation Meeting

(2) The decision by the debtor's creditors to approve or reject the proposal shall be made by a Debt Restructuring Arrangement negotiation meeting.

(3) The personal insolvency proposer shall consider the convenience of creditors and the debtor in fixing the date and venue for the negotiation meeting, which may take place in-person or *via* digital communication means.

(4) The personal insolvency proposer shall send to every known creditor, who is a creditor in respect of an included debt -

- (a) written notice of the negotiation meeting;
- (b) a copy of the proposal for a Debt Restructuring Arrangement, including all of the requirements specified in section 50;
- (c) a creditor's claim form;
- (d) a postal vote form and electronic mail vote template;
- (e) a statement asking each creditor to decide whether it approves or rejects the proposed Debt Restructuring Arrangement;

- (f) a statement of the date on which the negotiation meeting will be held, that date being at least twenty one days after the sending of the statement; and
- (g) a statement to the effect that a creditor who does not attend the negotiation meeting, or does not cast a postal vote or electronic mail vote, shall be deemed to have accepted the proposal for a Debt Restructuring Arrangement.

(5) A creditor who has submitted a creditor's claim form, in a manner satisfying any requirements which may be prescribed, may vote on the proposal by —

- (a) sending a postal vote that reaches the personal insolvency proposer before or at the negotiation meeting; or
- (b) sending an electronic mail vote that reaches the personal insolvency proposer before or at the negotiation meeting.

(6) If the personal insolvency proposer receives a postal vote, or other communication of assent or dissent as prescribed, before or at the meeting, this vote or communication has effect as if the creditor had been present and voted at the meeting.

Creditor
Approval
of Debt
Restructuring
Arrangements

52. (1) The personal insolvency proposer shall facilitate and chair the Debt Restructuring Arrangement negotiation meeting.

(2) Subject to the provisions of this Part and as may be prescribed, the following paragraphs of the Fifth Schedule shall apply to the following matters regarding the holding of a meeting referred to in this section: -

- (a) proxies;
 - (b) chairperson;
 - (c) quorum;
 - (d) adjourned meetings;
 - (e) miscellaneous matter.
- (3) At the negotiation meeting, the creditors may —
- (a) conduct such examination of the debtor as is reasonable to clarify the debtor’s financial circumstances;
 - (b) adjourn the meeting for a maximum period of seven days to allow further investigation of the debtor’s affairs, by passing a resolution of a majority of creditors in value;
 - (c) accept the proposal, by passing a resolution, in accordance with subsection (3) or (4), that sets out the final terms of the Debt Restructuring Arrangement;
 - (d) with the consent of the debtor, modify or amend the proposal, by passing a resolution, in accordance with subsection (3) or (4), that sets out the final terms of the Debt Restructuring Arrangement;
 - (e) appoint the personal insolvency proposer as personal insolvency administrator of the Debt Restructuring Arrangement, or appoint another person, firm or body who -
 - (i) is willing to act as personal insolvency administrator; and
 - (ii) has consented in writing to the appointment and has not withdrawn the consent at the time of appointment;

- (f) with the consent of the debtor, include such terms in the Debt Restructuring Arrangement with respect to the supervision of the affairs of the debtor as they may deem advisable.

(4) A proposal is approved where the claims of those creditors voting in favour of the proposal represent a majority in value of the claims of all creditors entitled to vote.

(5) Where the proposal includes terms modifying or limiting the rights of secured creditors, in a manner specified in section 48 or otherwise, the proposal is approved where the claims of those secured creditors voting in favour of the proposal represent more than two thirds of the value of the claims of secured creditors entitled to vote.

(6) Where the proposal includes terms modifying or limiting the rights of lessors or owners of goods under an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods, in a manner specified in section 48 or otherwise, the proposal is approved where the claims of such lessors and owners voting in favour of the proposal represent more than two thirds of the value of the claims of such creditors entitled to vote.

(7) The relevant secured creditor may not vote on the proposal, where the proposal —

- (a) does not include terms modifying or limiting the rights of a secured creditor; or
- (b) provides for the sale or disposal of an asset subject to security for the benefit of a secured creditor :

Provided however, if the debtor has made a declaration under section 47A of the Mortgage Act (Chapter 89), such secured creditor may participate as an unsecured creditor to the extent of the unsecured portion of the debt.

(8) The relevant creditor may not vote on the proposal, where the proposal —

- (a) does not include terms modifying or limiting the rights of a creditor under a hire purchase agreement; or
- (b) provides for the sale or disposal of the asset subject to the hire purchase agreement, for the benefit of the creditor.

(9) A creditor who, having been duly notified, does not-

- (a) attend the negotiation meeting;
- (b) cast a postal vote; or
- (c) cast an electronic mail vote,

shall be deemed to have voted in favour of the proposal for a Debt Restructuring Arrangement.

(10) Where no creditor votes, the proposed Debt Restructuring Arrangement shall be deemed to have been approved under this section.

(11) For the avoidance of doubt, a creditor who, having been given notice in accordance with the provisions of this Part, does not-

- (a) submit a creditor's claim form under section 57;
- (b) attend the negotiation meeting under this section; or
- (c) cast a vote opposing the proposal under this section,

shall not be entitled to bring an application to object to a court order confirming the coming into effect of the Arrangement under section 57.

(12) Where the creditors at a negotiation meeting do not accept the proposal -

- (a) the personal insolvency proposer shall endorse the proposal “not accepted by creditors” and return it to the Official Receiver; and
- (b) the Debt Restructuring Arrangement procedure shall terminate.

Submission of
approved Debt
Restructuring
Arrangements
to Official
Receiver

53. (1) After the proposal has been accepted by the creditors, the personal insolvency proposer shall, as soon as practicable, submit to the Official Receiver-

- (a) written notice of the result of the vote of the creditor's at the Debt Restructuring Arrangement negotiation meeting; and
- (b) the final terms of the Debt Restructuring Arrangement.

(2) On receiving the documents set out in subsection (1), the Official Receiver shall confirm that the terms of the Debt Restructuring Arrangement satisfy the provisions of this Part.

(3) On confirming that the terms of the Debt Restructuring Arrangement satisfy the provisions of this Part, the Official Receiver shall issue a certificate recommending a Debt Restructuring Arrangement.

(4) The Official Receiver shall then-

- (a) present this certificate, together with written notice of the result of the creditor vote at the

negotiation meeting and the final terms of the Debt Restructuring Arrangement, to the appropriate court; and

- (b) notify the debtor, the personal insolvency proposer and all creditors listed in the Arrangement of the issuance of the certificate.

(5) The Official Receiver may only refuse to issue a certificate recommending a Debt Restructuring Arrangement if -

- (a) the Arrangement does not satisfy the provisions of this Part; or
- (b) the Official Receiver becomes aware of a material inaccuracy in the debtor's statement of financial affairs or accompanying documents;
- (c) the Official Receiver becomes aware of a material change in the debtor's circumstances that was not reasonably foreseeable in the debtor's statement of financial affairs or accompanying documents;
- (d) the Official Receiver is of the opinion that the terms of the Debt Restructuring Arrangement are not reasonable or are not fair to the debtor and the creditors as a whole.

(6) If the Official Receiver refuses to issue a certificate recommending a Debt Restructuring Arrangement, the Official Receiver shall —

- (a) provide reasons for such refusal to the debtor, personal insolvency proposer and creditors; and
- (b) notify the appropriate court of its recommendation, that the court may not confirm the coming into effect of the Debt Restructuring Arrangement.

Court
Confirmation
of Debt
Restructuring
Arrangements

54. (1) Where the court receives a recommendation from the Official Receiver with respect to a Debt Restructuring Arrangement under section 53, the court shall consider the recommendation, together with any accompanying documentation.

(2) When considering a recommendation under this section, the court shall be entitled to treat a certificate issued by the Official Receiver under subsection (3) of section 53, as evidence of the matters certified therein.

(3) The court shall, when considering a recommendation under this section, hear any objection to the recommendation that is made by a creditor, the debtor or the personal insolvency proposer.

(4) Where an objection has been made under subsection (3), and the court requires further information or evidence to arrive at a decision, the court may hold a hearing. The hearing shall be notified by written notice to the Official Receiver, the personal insolvency proposer, the debtor and the creditors.

(5) Having considered the recommendation, the court shall make an order confirming the coming into effect of the Debt Restructuring Arrangement if it considers that —

- (a) the Debt Restructuring Arrangement satisfies the criteria in this Part; and
- (b) the making of the Debt Restructuring Arrangement has complied with the procedural requirements of this Part.

(6) On confirming the coming into effect of the Debt Restructuring Arrangement, the court shall direct the Official Receiver to cause such details of the Arrangement as may be prescribed, including the name, address and description of the debtor, and the date on which the order is made to be published —

- (a) in the Personal Insolvency Register; and
- (b) by public notice.

(7) When making an order confirming the Debt Restructuring Arrangement, the court shall direct the Official Receiver to give written notice —

- (a) to the debtor, personal insolvency proposer and personal insolvency administrator of the issue of the order and the coming into effect of the Debt Restructuring Arrangement;
- (b) to the debtor of the obligations of debtor's under section 32 to the extent that these obligations apply, for the duration of the Debt Restructuring Arrangement;
- (c) to each creditor of the debtor of the issue of the order and the coming into effect of the Debt Restructuring Arrangement; and
- (d) to each creditor of the rights of creditors to object to the Debt Restructuring Arrangement under section 57.

55. (1) A Debt Restructuring Arrangement that is approved by the court is binding on all the creditors who hold included debts and are affected by the terms of the Arrangement.

Effect of Court
Confirmation
of Debt
Restructuring
Arrangements

(2) The court order confirming the coming into effect of the Debt Restructuring Arrangement shall be conclusive as to the validity of the Arrangement.

(3) Following the court order confirming the coming into effect of the Debt Restructuring Arrangement, the Arrangement remains in effect according to its terms until —

- (a) it is completed in accordance with such terms and section 60; or

(b) it is terminated under section 59.

(4) While a Debt Restructuring Arrangement is in effect, a creditor to whom the debtor owes an included debt-

(a) shall not take any actions to recover or enforce the debt; and

(b) in particular, shall not take any actions to-

- (i) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor or the personal insolvency administrator, or in accordance with the terms of the Arrangement;
- (ii) initiate or continue any legal proceedings against the debtor in relation to an included debt;
- (iii) collect, secure, recover or demand payment of an included debt;
- (iv) execute or enforce a judgment or an order of a court or tribunal, subject to subsection (8) against the debtor;
- (v) obtain a warrant;
- (vi) recover goods in the possession of the debtor otherwise than in accordance with the terms of the Arrangement;
- (vii) obtain possession of a premises in which the debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, unless the requirements of subsection (6) are met;

- (viii) unless where the terms of the Arrangement provide otherwise, take any of the actions in this subsection against another person who is jointly liable with the debtor to whom the Debt Restructuring Arrangement relates;
- (ix) unless where the terms of the Arrangement provide otherwise, take any of the actions in this subsection against another person who has guaranteed the debts of the debtor to whom the Debt Restructuring Arrangement relates;
- (x) instruct an agent to take any of the actions mentioned in paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix).

(5) While a Debt Restructuring Arrangement is in effect, a court may exceptionally give permission for a creditor to take a step listed in subsection (4), where the court considers that-

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the step; and
- (b) the step will not-
 - (i) cause undue detriment to the debtor to whom the Arrangement relates;
 - (ii) unfairly prejudice any other creditor; or
 - (iii) significantly undermine the objectives of the Arrangement.

(6) While a Debt Restructuring Arrangement is in effect in respect of a debtor, a court may exceptionally give permission for an owner of a premises in which the debtor is residing under a tenancy agreement to obtain possession of the premises, only if-

- (a) the duration of the tenancy contract has expired during the course of the Debt Restructuring Arrangement;
- (b) the debtor owes arrears of rent to relevant creditor of an amount of more than three months of rent; and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing rent payments over the course of the Arrangement; or
- (c) an application of an owner to obtain possession of the premises is based on grounds other than the debtor's non-payment of rent.

(7) Nothing in this section shall affect a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor, where the execution or other legal process or distress was completed at least one hundred and eighty days before the court order confirming the coming into effect of the Debt Restructuring Arrangement, where-

- (a) an execution against movable or immovable property is completed by seizure, by the entry into possession of a receiver, appointee or a person charged with execution, and a sale completed; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(8) While the Debt Restructuring Arrangement is in effect, a supplier of any essential goods or services shall not –

- (a) refuse to supply goods or services to a debtor, by reason of the debtor's default in paying charges due for goods or services in relation to a period before the coming into effect of the Arrangement;

- (b) make it a condition of the supply of goods or services to a debtor, that payment be made of outstanding charges due for goods or services in relation to a period before the coming into effect of the Arrangement; or
- (c) rely on an insolvency-related term of the agreement for the supply of goods or services, except with the prior, written consent of the personal insolvency administrator.

(9) The personal insolvency administrator may give consent under paragraph (c) of subsection (8), where it is satisfied that the reliance on the insolvency-related term is necessary to put the Debt Restructuring Arrangement into effect and to serve the objectives of the Debt Restructuring Arrangement as specified in section 44.

(10) The personal insolvency administrator is not liable in damages for declining to give consent under paragraph (c) of subsection (8).

(11) A Debt Restructuring Arrangement does not prevent the commencement or continuation of any criminal proceedings against a debtor.

(12) Any action taken contrary to this section shall be *null and void*.

(13) Where a person has acquired an interest in property or any other right under a transaction with a creditor, which right arose from an action taken by a creditor or creditor's agent which was contrary to this section, the nullity of that action shall not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

(14) Where a Debt Restructuring Arrangement does not include terms modifying or limiting the rights of a secured creditor, nothing in this section shall affect the right of a secured creditor to enforce its security.

(15) Where a Debt Restructuring Arrangement includes terms modifying or limiting the rights of a secured creditor, in a manner specified in section 48 or otherwise, a secured creditor may only enforce its security in accordance with the terms of the Arrangement.

(16) Where a Debt Restructuring Arrangement does not include terms modifying or limiting the rights of a creditor under a hire purchase agreement, nothing in this section shall affect the rights of a creditor under a hire purchase agreement, to enforce its property rights under such agreement.

(17) Where the Arrangement includes terms modifying or limiting the rights of lessors or owners of goods under an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods, in a manner specified in section 48 or otherwise, a lessor or owner may only enforce its property rights under such agreement in accordance with the terms of the Arrangement.

Obligations
of Debtor
under Debt
Restructuring
Arrangement

56. (1) While the Debt Restructuring Arrangement is in effect, the debtor shall satisfy any obligations of debtors under section 32, which may reasonably apply throughout the duration of the Arrangement.

(2) In addition to any obligations specified in section 32, the debtor shall do everything that is necessary to put the Debt Restructuring Arrangement into effect.

Challenge
of Debt
Restructuring
Arrangement

57. (1) A creditor who is bound by a Debt Restructuring Arrangement may apply to the court to object to a court order confirming the coming into effect of the Arrangement.

(2) A creditor's application to object to a Debt Restructuring Arrangement under subsection (1), shall be based on one or more of the following grounds, namely that-

(a) the debtor does not meet the eligibility criteria in section 46;

- (b) the Debt Restructuring Arrangement does not comply with the mandatory provisions specified in section 47;
- (c) the making and confirmation of the Debt Restructuring Arrangement has not complied with the procedural requirements of this Part;
- (d) a debt to be covered by the Debt Restructuring Arrangement is not an included debt for the purposes of section 37;
- (e) the debtor has made any material false representation or omission in making the statement of financial affairs, or on supplying any accompanying information; or
- (f) the Debt Restructuring Arrangement causes unfair prejudice to the interests of the creditor.

(3) A creditor's application to court to object to a Debt Restructuring Arrangement must be made within the period of twenty eight days from the day on which the Debt Restructuring Arrangement comes into effect.

(4) A creditor must provide written notice to the debtor, and the personal insolvency administrator, of an application to object to a Debt Restructuring Arrangement, including the grounds on which the application is based.

(5) Where on an application under this section, the court is satisfied as to any of the grounds specified in subsection (2), the court may do any of the following, namely-

- (a) make an order directing that the Debt Restructuring Arrangement shall not apply in whole or in part to the creditor who made the application to court, where to do so would not unfairly prejudice any other creditor;

- (b) direct the personal insolvency administrator to use the variation procedure under section 58, to seek a decision from creditors as to whether they approve a revised proposal; or
- (c) make an order cancelling the Debt Restructuring Arrangement in respect of any other included debt or creditor.

(6) Where a court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the Debt Restructuring Arrangement was in effect.

(7) Where a court has made an order under paragraph (c) of subsection (5), with the effect of cancelling the Debt Restructuring Arrangement in respect of all included debts and all creditors, the court shall also make an order establishing a temporary Moratorium on creditor remedies, which shall endure for a period of twenty one days and shall have the same effect as a Debt Protection Moratorium under section 40.

(8) In any case where a court makes an order under subsections (5) or (6), the court shall give written notice to —

- (a) the debtor;
- (b) the personal insolvency administrator;
- (c) the Official Receiver; and
- (d) any creditors to whom the order under subsection (5) or (6) applies.

(9) Where a court gives notice to the Official Receiver under subsection (8), the Official Receiver shall, within a period of fourteen days—

- (a) cause an entry to be made in the Personal Insolvency Register, in such manner as may be prescribed; and
- (b) give written notice of the court order made under subsection (5), and any requirements made under subsection (6), to any affected creditor.

58. (1) Where a court has made an order confirming the coming into effect of the Debt Restructuring Arrangement under section 54, the Arrangement may be varied in accordance with its terms and subject to this section.

Variation
of Debt
Restructuring
Arrangement

(2) Whether on the personal insolvency administrator's own initiative or the request of a debtor or creditor, a personal insolvency administrator, shall propose a variation of a Debt Restructuring Arrangement where –

- (a) it appears to the personal insolvency administrator that there has been a material change in the debtor's circumstances; and
- (b) the personal insolvency administrator is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved by the debtor's - creditors and implemented.

(3) Where the conditions in subsection (2) apply, the personal insolvency administrator shall, as soon as is reasonably practicable —

- (a) require the debtor to complete an updated statement of the debtor's financial affairs, in accordance with section 33;
- (b) assist the debtor in preparing a proposal for a variation of the Debt Restructuring Arrangement;

- (c) request the consent of the debtor to the proposal and to the seeking of creditor approval of the proposal; and
- (d) write to each affected creditor to request them to indicate whether the proposal should be accepted.

(4) When writing to each affected creditor under subsection (3), in respect of a proposal to vary a Debt Restructuring Arrangement, the personal insolvency administrator shall —

- (a) give the creditor written notice of —
 - (i) the proposal; and
 - (ii) the updated statement of the debtor's financial affairs, including details of the material change in the debtor's circumstances;
- (b) give the creditor notice of a statement to the effect that —
 - (i) the debtor satisfies the eligibility requirements of section 46;
 - (ii) to the best of the personal insolvency proposer's knowledge, the information contained in the debtor's updated statement of financial affairs is complete and accurate;
 - (iii) the proposal is a reasonable means of addressing the relevant change in the debtor's circumstances; and
 - (iv) the proposal has a reasonable prospect of being approved and implemented;
- (c) request to the creditor to provide a written response, *via* physical or electronic mail, setting out whether or not the proposal should be accepted; and

- (d) give the creditor written notice of the need to provide this response to the personal insolvency practitioner in advance of a stated deadline, which shall be at least fourteen days after the proposal has been provided to each creditor.

(5) A proposal to vary a Debt Restructuring Arrangement is accepted if –

- (a) the debtor provides consent in writing to the variation of the Arrangement;
- (b) the personal insolvency administrator writes to affected creditors of a debtor under this section;
- (c) subject to paragraphs (d) and (e), replies accepting the proposal are provided before the deadline stated in subsections (4) and (5) by creditors whose claims represent a majority in value of the claims of all creditors bound by the Arrangement;
- (d) where the proposal includes terms modifying or limiting the rights of secured creditors, replies accepting the proposal are provided before the deadline stated in subsections (4) and (5) by secured creditors whose claims represent more than two thirds of the value of the claims of secured debts bound by the Arrangement; and
- (e) where the proposal includes terms modifying or limiting the rights of lessors or owners of goods under an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods, replies accepting the proposal are provided before the deadline stated in subsections (4) and (5) by lessors or owners whose claims represent more than two thirds of the value of the claims of such creditors bound by the Arrangement.

(6) For the purposes of subsection (5), a creditor who does not provide a response to the personal insolvency administrator before a deadline of fourteen days after written notice of the proposal has been given to each creditor under subsection (4), shall be deemed to have stated that the proposal to vary the Debt Restructuring Arrangement should be accepted.

(7) When a proposal to vary a Debt Restructuring Arrangement has been accepted, the personal insolvency administrator shall, as soon as is reasonably practicable, submit to the Official Receiver —

- (a) a written notice of the creditor responses approving the variation to the Debt Restructuring Arrangement; and
- (b) the final terms of the varied Debt Restructuring Arrangement.

(8) On receiving the documents set out in subsection (7), the Official Receiver must issue a certificate recommending the confirmation of the varied Debt Restructuring Arrangement.

(9) On issuing a certificate recommending the confirmation of a varied Debt Restructuring Arrangement, the Official Receiver shall —

- (a) present this certificate, together with written notice of the creditor approval of the proposal to vary the Debt Restructuring Arrangement, and the final terms of the varied Arrangement, to the court; and
- (b) give written notice of the issuance of the certificate to -
 - (i) the debtor;

- (ii) the personal insolvency administrator; and
- (iii) all creditors listed in the Arrangement.

(10) Where the appropriate court receives a recommendation from the Official Receiver with respect to a variation of a Debt Restructuring Arrangement under subsection (9), the court shall consider the recommendation, and make an order confirming the coming into effect of the varied Arrangement.

(11) Where the court makes an order confirming the coming into effect of the varied Arrangement under subsection (10), the provisions of this Part shall apply to the varied Arrangement as if the varied Arrangement was an Arrangement confirmed under section 54.

59. (1) A proposal by the debtor, acting with the personal insolvency administrator, or a creditor may at any time terminate a Debt Restructuring Arrangement, in any such manner as may be prescribed, where —

Termination
of Debt
Restructuring
Arrangement

- (a) the claims of those creditors voting in favour of the proposal represent a majority in value of the claims of all creditors entitled to vote;
- (b) the proposal includes terms modifying or limiting the rights of secured creditors, and the claims of those secured creditors voting in favour of the proposal represent more than two thirds of the value of the claims of secured creditors entitled to vote; or
- (c) the proposal includes terms modifying or limiting the rights of lessors or owners of goods under an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods, and the claims of such lessors and owners voting in favour of the

proposal represent more than two thirds of the value of the claims of such creditors entitled to vote.

(2) Any of the following persons may apply to the court for an order terminating a Debt Restructuring Arrangement—

- < (a) the debtor;
- (b) a creditor;
- (c) the personal insolvency administrator; or
- (d) the Official Receiver.

(3) An application for an order terminating a Debt Restructuring Arrangement may include —

- (a) where it is made by a debtor, an application for a bankruptcy order; or
- (b) where it is made by a creditor, a petition for a bankruptcy order against the debtor,

in such manner as may be prescribed.

(4) An application under this section shall be based on one or more of the following grounds:-

- (a) a material false representation or omission has been found in the statement of the debtor's financial affairs, which causes a material detriment to a creditor;
- (b) in the making and confirmation of the Debt Restructuring Arrangement where the procedural requirements of this Part had not been complied with;
- (c) where the debtor did not satisfy the eligibility criteria under section 46 when the Debt Restructuring Arrangement was proposed;

- (d) where the debtor persistently did not comply with the obligations imposed on the debtor under the Debt Restructuring Arrangement, under sections 32 and 56;
- (e) since the coming into effect of the Debt Restructuring Arrangement, where the debtor has been convicted of an offence under this Act;
- (f) where the debtor is in arrears in respect of payments under the Debt Restructuring Arrangement of an amount corresponding to a period of not less than three months;
- (g) where the debtor has failed to carry out any action reasonably necessary to put the Debt Restructuring Arrangement into effect; or
- (h) where the debtor has unreasonably refused to consent to a variation of the Debt Restructuring Arrangement.

(5) On hearing an application under this section , the court may —

- (a) dismiss the application;
- (b) terminate the Debt Restructuring Arrangement;
or
- (c) order that the personal insolvency administrator prepare a proposal for a variation of the Debt Restructuring Arrangement under section 58.

(6) Where the court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the Debt Restructuring Arrangement was in effect.

(7) In any case where the court makes an order under subsection (5) or (6), the court must give written notice to —

- (a) the debtor;
- (b) the personal insolvency administrator;
- (c) the Official Receiver; and
- (d) any creditors to whom the order under subsection (5) or (6) applies.

(8) Where the court gives written notice to the Official Receiver under subsection (7), the Official Receiver shall, within a period of fourteen days from the date of receipt of such notice, cause an entry to be made in the Personal Insolvency Register of such termination.

Completion
of Debt
Restructuring
Arrangement

60. (1) A Debt Restructuring Arrangement is completed when all of the obligations that it created have been discharged, unless the Arrangement had been terminated earlier under section 59.

(2) When an Arrangement is completed under subsection (1), the personal insolvency administrator shall, within fourteen days after the completion —

- (a) provide the debtor with a certificate of completion; and
- (b) give written notice to the Official Receiver of the certificate of completion.

(3) The certificate of completion is *prima facie* evidence of the facts stated in it.

(4) When a Debt Restructuring Arrangement is completed under subsection (1), the debtor's included debts shall

accordingly be cancelled, and the debtor shall not be liable to pay any part of the debts, including any interest, fees or charges that may have become payable in relation to those debts.

(5) The completion of a Debt Restructuring Arrangement shall not release the debtor from any excluded debts.

(6) The completion of a Debt Restructuring Arrangement shall not, except to the extent provided in the terms of the Arrangement —

- (a) release any other person from a debt that the person owes jointly with the debtor; or
- (b) release a guarantor from the guarantee that the guarantor gave for the debtor's debt.

(7) The completion of a Debt Restructuring Arrangement shall not, except to the extent provided in the terms of the Arrangement, release the debtor from liability under any secured debts or from any portion of a secured debt.

(8) When the Official Receiver receives the certificate of completion specified in subsection (2), the Official Receiver shall —

- (a) record the successful completion of the Debt Restructuring Arrangement in the Personal Insolvency Register; and
- (b) within fourteen days after such receipt, remove from the Personal Insolvency Register all information recorded in it in respect of the completed Arrangement.

(9) For the avoidance of doubt, when a Debt Restructuring Arrangement is completed under subsection (1), the Debt Restructuring Arrangement is no longer in effect, and the Moratorium on creditor remedies under subsection (4) of section 55 shall cease to apply.

Duties of
Personal
Insolvency
Administrator
under Debt
Restructuring
Arrangement

61. (1) The duties of the personal insolvency administrator under a Debt Restructuring Arrangement include —

- (a) giving effect generally to the Arrangement;
- (b) dealing with the debtor's property in the manner specified in the Arrangement;
- (c) giving information about the administration of the Arrangement to the debtor when the debtor makes a reasonable request for the information;
- (d) giving information about the administration of the Arrangement to a creditor who —
 - (i) is bound by the Arrangement;
 - (ii) makes a reasonable request for the information;
- (e) giving information about the administration of the Arrangement to the Official Receiver;
- (f) considering whether the debtor has committed an offence under this Act; and
- (g) referring to the Official Receiver or to relevant law enforcement authorities any evidence of any offence by the debtor under this Act, any regulation made under this Act, or any other applicable enactment.

(2) The personal insolvency administrator shall not be reimbursed for expenses incurred in administering the Arrangement unless those expenses are of a kind specified in the relevant proposal for a Debt Restructuring Arrangement.

(3) The personal insolvency administrator shall —

- (a) not pay any money received into a personal bank account of the personal insolvency administrator; and
- (b) maintain a separate bank account for receiving all monies paid by debtors under Debt Restructuring Arrangements, and shall not pay any money out of the account otherwise than —
 - (i) for purposes related to the administration of Debt Restructuring Arrangements;
 - (ii) in accordance with this Act and any regulation made under this Act; or
 - (iii) in accordance with a direction of the court.

(4) The personal insolvency administrator shall transmit monies paid by debtors under Debt Restructuring Arrangements to creditors in the agreed proportion on a timely basis.

(5) The personal insolvency administrator shall maintain complete and accurate records of the account of monies received from the debtor and the monies disbursed to creditors under a Debt Restructuring Arrangement.

(6) The personal insolvency administrator shall maintain regular contact with the debtor and conduct a review of the Debt Restructuring Arrangement —

- (a) at least once in every period of six months; and
- (b) at such other times as may be required by the circumstances of the operation of the Arrangement.

(7) Where the circumstances of the debtor have changed in a material respect, the personal insolvency administrator, in consultation with the debtor, shall give due consideration as to whether the procedure for varying the Debt Restructuring Arrangement under section 58 should be commenced.

Personal
Insolvency
Proposers

62. (1) A personal insolvency proposer, when performing the functions of a personal insolvency proposer under this Part —

- (a) is not an agent of the debtor;
- (b) is not an agent of any creditor or creditors;
- (c) shall engage in the personal insolvency proposer's professional capacity with the debtor and creditors to seek, if possible, to achieve a solution which is satisfactory to both the debtor and to creditors; and
- (d) shall exercise professional independent judgment, having regard to the provisions of this Act and any regulation, rules, standards, codes of conduct, practice directions or guidelines, made by the Authority under section 4.

(2) A person may serve as a personal insolvency proposer only if the person —

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the proposed Debt Restructuring Arrangement;
- (b) has certified in writing that the person is qualified under section 12 to be appointed and act as a key office holder with respect to the proposed Debt Restructuring Arrangement; and

- (c) has consented in writing to the appointment as a personal insolvency proposer and has not withdrawn consent at the time of appointment.

(3) A person who, gives consent, to be appointed or acts as a personal insolvency proposer knowing that none of the requirements of paragraphs (a) and (b) of subsection (2) have been met, commits an offence and shall be liable on conviction to a fine not less than five hundred thousand rupees and not exceeding two million rupees or to rigorous imprisonment for a term not exceeding three years or to both such a fine and imprisonment.

63. (1) A personal insolvency administrator, when performing the functions of a personal insolvency administrator under this Part— Personal
Insolvency
Administrators

- (a) is not an agent of the debtor;
- (b) is not an agent of any creditor or creditors;
- (c) shall engage in the personal insolvency administrator's professional capacity with the debtor and creditors to put the Debt Restructuring Arrangement into effect; and
- (d) shall exercise professional independent judgment, having regard to the provisions of this Act and any regulation, rules, standards, codes of conduct, practice directions or guidelines, made by the Authority under section 4.

(2) A person may serve as a personal insolvency administrator only if the person —

- (a) is qualified under section 12, to be appointed and act as a key office holder with respect to the Debt Restructuring Arrangement;

- (b) has certified in writing that the person is qualified under section 12, to be appointed and act as a key office holder with respect to the Debt Restructuring Arrangement; and
- (c) has consented in writing to the appointment as a personal insolvency administrator and has not withdrawn consent at the time of appointment.

(3) A person who, gives consent, to be appointed or acts as a personal insolvency administrator knowing that none of the requirements of paragraphs (a) and (b) of subsection (2) have been met, commits an offence under this subsection and shall be liable on conviction to a fine not less than five hundred thousand rupees and not exceeding two million rupees or to rigorous imprisonment for a term not exceeding three years or to both such a fine and imprisonment.

Debt
Restructuring
Arrangement:
Court
Directions

64. (1) The Official Receiver or a personal insolvency administrator, may make an application to the court for directions or an order in relation to any matter arising in connection with a Debt Restructuring Arrangement.

(2) On an application under subsection (1), the court may-

- (a) give the Official Receiver or personal insolvency administrator directions as the court deems appropriate;
- (b) make an order for the enforcement of any obligation of the debtor arising under sections 32 and 56;
- (c) treat the application as an application for Termination of the Debt Restructuring Arrangement under section 59; or

- (d) order the personal insolvency administrator to commence the procedure for the variation of the Debt Restructuring Arrangement under section 58.

PART V

Debt Rehabilitation Orders

65. (1) This Part establishes an alternative procedure to Bankruptcy, the goals of which procedure include —

Debt
Rehabilitation
Order

- (a) to provide urgent economic rehabilitation and relief from over-indebtedness to debtors who hold insufficient assets and income to have any reasonable prospect of making repayments to creditors; and
- (b) to resolve in a timely, efficient, and impartial manner, with minimal procedural complexity and expense, cases of insolvency in which the levels of outstanding debt and resources of the debtor do not justify the use of a formal Bankruptcy procedure.

(2) The Debt Rehabilitation Order procedure does not affect the rights of secured creditors.

66. A debtor shall be eligible for a Debt Rehabilitation Order if the debtor meets all of the following criteria:-

Eligibility
for a Debt
Restructuring
Order

- (a) the debtor has total debts (apart from any excluded debt) that amount to less than two million rupees;
- (b) the debtor has monthly surplus income, as specified in section 36, of one hundred thousand rupees or less;
- (c) the debtor has available property, excluding protected property as defined by section 34, of a value of two hundred thousand rupees or less;

- (d) the debtor is unable to pay such debtor's debts as they become due;
- (e) the debtor is resident in Sri Lanka or at any time within three years before the date of the Debt Rehabilitation Order application —
 - (i) was resident or had a place of residence in Sri Lanka; or
 - (ii) carried on business in Sri Lanka;
- (f) the debtor is not currently a bankrupt debtor;
- (g) the debtor has not been subject to a Debt Rehabilitation Order within one year prior to the date of the Debt Rehabilitation Order application; or
- (h) the debtor has not been subject to a Bankruptcy Order within five years prior to the date of the Debt Rehabilitation Order application.

Application
for a Debt
Rehabilitation
Order

67. (1) A debtor who meets the criteria in section 66 may apply, on such debtor's own initiative or through an authorised intermediary, to the Official Receiver for a Debt Rehabilitation Order.

(2) The form of an application for a Debt Rehabilitation Order may be prescribed, in a manner consistent with the goals of procedure as specified in section 65.

(3) An application for a Debt Rehabilitation Order shall be accompanied by such fee (if any) as may be prescribed in accordance with subsection (8).

(4) An application for a Debt Rehabilitation Order must include, in addition to any requirements as may be prescribed, a statement of the debtor's financial affairs, in accordance with section 33.

(5) In making an application for a Debt Rehabilitation Order, the debtor consents to —

- (a) the Official Receiver making such enquiries as it considers necessary to determine whether the debtor meets the eligibility criteria specified in section 66;
- (b) the postponement of the consideration of the Debt Rehabilitation Order application by the Official Receiver until the Official Receiver has received satisfactory answers to such enquiries;
- (c) the disclosure by the Official Receiver of personal data of the debtor to creditors and other third parties to the extent necessary for the making and consideration of a Debt Rehabilitation Order application; and
- (d) the disclosure to the Official Receiver, by creditors, government agencies or any other relevant third parties, of personal data of the debtor, to the extent necessary for the making and consideration of a Debt Rehabilitation Order application.

(6) On submitting an application for a Debt Rehabilitation Order, the debtor becomes subject to any relevant obligations specified in section 32, that may reasonably apply to the circumstances of a Debt Rehabilitation Order application.

(7) Details, regarding the actions of authorised intermediaries in assisting a debtor in the preparation and submission of an application for a Debt Rehabilitation Order, shall be as prescribed.

(8) Where a fee is prescribed in accordance with subsection (3), the fee must be set at a level consistent with the goals of the procedure as specified in section 65.

Criteria for
making Debt
Rehabilitation
Order

68. (1) For the purposes of determining a Debt Rehabilitation Order Application, the Official Receiver shall apply the following presumptions.

(2) The Official Receiver shall be able to presume that the debtor is unable to pay debts at the time of determining the application if —

- (a) it appears to the Official Receiver to be the case at the application date from the information supplied in the application and the Official Receiver has no reason to believe that the information supplied is incomplete or inaccurate; and
- (b) the Official Receiver has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.

(3) The Official Receiver shall be able to presume that all other conditions specified in section 66 are satisfied if —

- (a) it appears to the Official Receiver from the information supplied in the application that the information supplied is incomplete or inaccurate;
- (b) any verification checks, as may have been prescribed, have been made; and
- (c) the Official Receiver has no reason to believe that, by virtue of a change in the debtor's circumstances since the application date, any condition may no longer be satisfied.

(4) References in this section to information supplied in the application includes information provided to the Official Receiver in support of the application, or in response to any enquiries of the Official Receiver.

69. (1) This section applies where an application for a Debt Rehabilitation Order has been made.

Official
Receiver's
recommen-
dation:
Debt
Rehabilitation
Order

(2) The Official Receiver may postpone consideration and determination of an application for a Debt Rehabilitation Order until such time as the debtor has provided satisfactory responses to any enquiries made by the Official Receiver in relation to the debtor's application.

(3) The Official Receiver must determine the Debt Rehabilitation Order application by —

- (a) deciding whether to refuse the application; or
- (b) if the Official Receiver does not refuse it, by issuing a certificate recommending a Debt Rehabilitation Order.

(4) On issuing a certificate recommending a Debt Rehabilitation Order, the Official Receiver must -

- (a) present this certificate, together with the Debt Rehabilitation Order application and any supporting documentation, to the court; and
- (b) give written notice to the debtor, and any authorised intermediary assisting the debtor, of the issuance of the certificate.

(5) The Official Receiver may refuse the application only if the Official Receiver is authorised to do so by any of the following provisions of this section.

(6) The Official Receiver may refuse the application if the Official Receiver considers that —

- (a) the application does not meet all of the requirements imposed under section 68;

- (b) the conditions specified under section 66 have not been satisfied;
- (c) the debtor has not responded satisfactorily to any enquiries of the Official Receiver within the time periods established by the Official Receiver for making enquiries; or
- (d) the debtor has made any material false representation or omission in making the application or in supplying any additional information to support the application.

(7) If the Official Receiver refuses an application, the Official Receiver shall give written notice of such refusal to the debtor and any authorised intermediary assisting the debtor, which shall include the reasons for the refusal.

Court
Determination
of Debt
Rehabilitation
Order
application

70. (1) Where the court receives a recommendation for a Debt Rehabilitation Order under section 69, the court shall consider the recommendation, together with any accompanying documentation.

(2) When considering an application under this section, the court shall be entitled to treat a certificate issued by the Official Receiver under section 69, as evidence of the matters certified therein.

(3) Having considered the recommendation for a debt rehabilitation order, the court shall make a Debt Rehabilitation Order in relation to the insolvent individual if the court considers that —

- (a) the debtor meets the eligibility criteria in section 66; and
- (b) the court has no reason to believe that the debtor has made a material false representation or omission in making the application.

(4) Having considered a recommendation for a Debt Rehabilitation Order, the court shall refuse an application to make a Debt Rehabilitation Order in relation to the debtor if the court considers that —

- (a) the debtor does not meet the eligibility criteria in section 66; or
- (b) the debtor has made any material false representation or omission in making the application or on supplying any accompanying information.

(5) On the making of a Debt Rehabilitation Order, the court shall direct the Official Receiver to cause such details of the order as may be prescribed, including the name, address and description of the debtor, and the date of the order, to be published —

- (a) in the Personal Insolvency Register; and
- (b) by public notice.

(6) On the making of a Debt Rehabilitation Order, the court shall direct the Official Receiver to give written notice to —

- (a) the debtor of the issue of the Debt Rehabilitation Order;
- (b) the debtor of the obligations of debtor's under section 32, to the extent that these duties apply for the duration of the Debt Rehabilitation Order;
- (c) each known creditor of the debtor of the issue of the Debt Rehabilitation Order and the inclusion of each known creditor's debt; and
- (d) each known creditor of the debtor of the rights of creditors to object to the Debt Rehabilitation Order under section 75.

Effect of Debt
Rehabilitation
Order

71. (1) While a Debt Rehabilitation Order is in effect in respect of a debtor, a creditor of the debtor to whom an included debt is owed—

- (a) has no remedy in respect of the debt;
- (b) shall not take any actions to recover or enforce the debt; and
- (c) in particular, shall not take any actions to —
 - (i) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor or the debtor’s representative;
 - (ii) initiate or continue any legal proceedings against the debtor in relation to an included debt;
 - (iii) collect, secure, recover or demand payment of an included debt;
 - (iv) execute or enforce a judgment or an order of a court or tribunal against the debtor;
 - (v) obtain a warrant;
 - (vi) unless the requirements of subsection (2) are met, obtain possession of a premises in which the debtor is residing under a tenancy agreement with the creditor;
 - (vii) subject to subsection (4), take possession of, or otherwise recover, any goods of the type specified in paragraphs (a), (b), (c) or (d) of subsection (4) of section 34 that are used by or in the possession of, the debtor, where the creditor is the owner or lessor of the goods;
 - (viii) instruct an agent to take any of the actions mentioned in paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii).

(2) While a Debt Rehabilitation Order is in effect in respect of a debtor, where the debtor has entered into a tenancy agreement, with the relevant creditor, a court may exceptionally give permission for such creditor to obtain possession of a premises in which the debtor is residing under such agreement only if —

- (a) the duration of the tenancy contract has expired during the course of the Debt Rehabilitation Order;
- (b) the debtor owes arrears of rent to relevant creditor of an amount of more than three months of rent; and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing rent payments over the duration of the order; or
- (c) an application of a relevant creditor to obtain possession of the premises is based on grounds other than the debtor's non-payment of rent.

(3) While a Debt Rehabilitation Order is in effect, a court may give permission for a creditor to take a step listed in paragraph (c) of subsection (1), where the court considers that-

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the step; and
- (b) the step will not —
 - (i) cause detriment to the debtor to whom the order relates;
 - (ii) unfairly prejudice any other creditor; or
 - (iii) significantly undermine the protections of the order.

(4) While a Debt Rehabilitation Order is in effect in respect of a debtor, a court may exceptionally give permission for a lessor or owner of goods to terminate an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods of the type specified in section 34, where —

- (a) the debtor owes arrears under such agreement of an amount more than three monthly repayments, and the court considers that it is more likely than not that the debtor will be unable to maintain on going repayments while the Debt Rehabilitation Order is in force; or
- (b) an application of a lessor or owner to terminate such agreement, and to obtain possession of, or otherwise recover, the goods subject to the agreement, is based on grounds other than the debtor's default in making repayments under the agreement.

(5) While a Debt Rehabilitation Order is in effect in respect of a debtor, a supplier of any essential goods or services shall not —

- (a) refuse to supply the goods or services to a debtor, by reason of the debtor's default in paying charges due for the goods or services in relation to a period before the making of the Order;
- (b) make it a condition of the supply of the goods or services to a debtor, that payment be made of outstanding charges due for the goods or services in relation to a period before the making of the Order; or
- (c) rely on an insolvency-related term of the agreement for the supply of the goods or services.

(6) A Debt Rehabilitation Order shall not prevent the commencement or continuation of any criminal proceedings against a debtor.

(7) Any action taken contrary to this section shall be *null and void*.

(8) Nothing in this section shall affect the right of a secured creditor to enforce the secured creditor's security.

(9) Nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor where the execution or other legal process or distress was completed at least one hundred and eighty days before the making of the Debt Rehabilitation Order, where —

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) a settlement of a debt is completed by satisfaction of the debt.

(10) While the Debt Rehabilitation Order is in effect, the debtor shall undertake to adhere to responsibilities under section 32 which may reasonably apply.

(11) Where, under subsection (5), a creditor has continued to supply a debtor with essential goods or services, the Official Receiver shall provide for payment to be made to the relevant creditor in respect of such continued supply, from the income of the debtor.

(12) Where a person has acquired an interest in property or any other right under a transaction with a creditor which arose from an action taken by a creditor or creditor's agent

which was contrary to this section, the nullity of that action shall not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

Duration
of Debt
Rehabilitation
Order

72. (1) The Debt Rehabilitation Order continues in effect until an Order of Discharge has been made under section 73, which shall be made as soon as practicable after the expiry of a period of one year from the date of the Debt Rehabilitation Order.

(2) The Debt Rehabilitation Order can continue for a period longer than that specified in subsection (1), if the court extends the Order under section 75, 76 or 77 for the purposes of properly considering whether the Debt Rehabilitation Order should be terminated or converted.

(3) When the court extends an Order under subsection (2), the court shall specify an alternative date for discharge, which shall not exceed ninety days after the expiry of the initial period of one year from the date of the Debt Rehabilitation Order.

Discharge of
debts

73. (1) In advance of the expiry of a period of one year from the date of the Debt Rehabilitation Order, the Official Receiver shall-

- (a) issue a Certificate of Discharge to the debtor; and
- (b) make an application to court for an order confirming the discharge of the debtor.

(2) If the Official Receiver has not yet made an application under subsection (1), within a period of thirty days after the expiry of a period of one year from the date of the Debt Rehabilitation Order, the debtor may bring an application to court for an order confirming the discharge of the debtor.

(3) On receiving an application under subsection (1), the court shall, within ninety days, make an order of discharge,

unless an application to terminate or convert the Debt Rehabilitation Order has been made under section 76 or 77.

(4) The court order made under subsection (3), shall provide that the debtor is discharged from the Debt Rehabilitation Order on the expiry of a period of one year from the date of the Debt Rehabilitation Order.

(5) When discharged from the Debt Rehabilitation Order, the debtor's included debts shall be cancelled, and the debtor shall not be liable to pay any part of the debts, including any interest, fees or charges which may have become payable in relation to those debts.

(6) The discharge of debts under this section shall not release the debtor from any debt or liability specified as an excluded debt under subsection (4) of section 37.

(7) A discharge under this section shall not release the debtor from any liability of any person who, at the date of the discharge, was —

- (a) a business partner of the discharged debtor;
- (b) a co-trustee with the discharged debtor;
- (c) jointly bound or contracted with the discharged debtor; or
- (d) guarantor or in the nature of a guarantor of the discharged debtor.

74. (1) While a Debt Rehabilitation Order is in effect, the Official Receiver shall manage the case and supervise the financial affairs of the debtor, in furtherance of the goals of the Debt Rehabilitation Order procedure including those specified in section 65.

Official
Receiver to
supervise Debt
Rehabilitation
Order

(2) In addition to remaining subject to the obligations of debtors specified in section 32, at any time following an application for a Debt Rehabilitation Order and until a Debt Rehabilitation Order ceases to have effect, a debtor shall —

- (a) disclose to the Official Receiver such information as the debtor's affairs;
- (b) attend meetings with the Official Receiver;
- (c) notify the Official Receiver as soon as reasonably practicable if such debtor becomes aware of any material error in such debtor's application, or any material change in such debtor's circumstances; and
- (d) do all such other things as the Official Receiver may reasonably require for the purpose of carrying out the functions of the Official Receiver under this section.

(3) The Official Receiver may carry out an investigation of any matter that appears to the Official Receiver to be relevant for the purpose of carrying out the functions of the Official Receiver under this section.

(4) The Official Receiver may require any person to provide such information and assistance, as may be necessary in carrying out the functions of the Official Receiver under this section.

(5) Any further details as to the procedures to be followed by the Official Receiver in exercising powers under this section may be prescribed.

(6) The Official Receiver may make an application to the court for directions or an order in relation to any matter arising in connection with a Debt Rehabilitation Order.

(7) On an application under subsection (6), the court may—

- (a) give the Official Receiver directions as the court deems appropriate;
- (b) make an order for the enforcement of any obligation of the debtor arising under section 32 of this Act;
- (c) treat the application as an application for termination of the Debt Rehabilitation Order under section 76;
- (d) treat the application as an application for conversion of the Debt Rehabilitation Order under section 77 ; or
- (e) make an order extending the duration of the Debt Rehabilitation Order for the limited purposes of permitting the Official Receiver to complete an investigation, provided that —
 - (i) the court shall specify an alternative date for discharge, which shall be no later than ninety days after the expiry of the initial period of one year from the date of the order; and
 - (ii) the court has due regard to any unfairness to the debtor which may result from the extension of the Order period; and to the extent to which an extension will further the goals of the Debt Rehabilitation Order procedure, including those specified in section 65.

75. (1) A creditor to whom an included debt is owed may apply to the court to object to —

- (a) the making of the Debt Rehabilitation Order; or

Creditor
objection
to Debt
Rehabilitation
Order

- (b) the inclusion under the Debt Rehabilitation Order of the creditor's debt.

(2) An objection under subsection (1) shall -

- (a) be made not later than twenty one days from the date on which the Official Receiver informed creditors of their right to object to the order under subsection (6) of section 70;
- (b) be made by the lodging by the creditor of a written notice of objection with the court, and of a written notice to the debtor and the Official Receiver; and
- (c) be based on grounds referred to in subsection (3).

(3) The grounds for objection to an order shall be limited to the following:-

- (a) the debtor did not satisfy the eligibility criteria under section 66 at the time of the making of a Debt Rehabilitation Order application; or
- (b) there is a material inaccuracy in the Debt Rehabilitation Order application, or in any material provided by the debtor in support of the application, which has caused a material detriment to the applicant.

(4) On receiving an application to object to the order, the court shall fix a date for a hearing of this application, to take place within ninety days after the receipt of the application.

(5) The court shall provide written notice to the debtor, creditors and the Official Receiver of the hearing of the application to object to the order, in such manner as may be prescribed.

(6) On receiving an application to object to the order, the court may require the Official Receiver-

- (a) to provide information to the court which may assist the court in making a determination; or
- (b) to conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to object to the order, the court may extend the duration of the order for the purposes of properly considering the matter, provided that-

- (a) such extension shall not exceed a period of ninety days beyond the initial duration of the order; and
- (b) the court has due regard to -
 - (i) any unfairness to the debtor which might result from the extension of the order period; and
 - (ii) the extent to which an extension will further the goals of the Debt Rehabilitation Order procedure, including those specified in section 65.

(8) On the hearing of an application to object to the order, if the court finds that the grounds referred to in subsection (3) have not been established, the court shall-

- (a) dismiss the objection; and
- (b) require the objecting creditor to pay incurred costs to the debtor, or such other amount as it finds necessary.

(9) On the hearing of an application to object to the order, if the court finds that any of the grounds referred to in subsection (3) have been established, the court may-

- (a) terminate the Debt Rehabilitation Order; or
- (b) make an order amending the Debt Rehabilitation Order, including the removal of the debt which was the subject of the objection under this section.

Termination
of Debt
Rehabilitaion
Order

76. (1) The Official Receiver may, while the Debt Rehabilitation Order remains in effect, apply to the court to request for the termination of the Debt Rehabilitation Order.

(2) An application to terminate an order under subsection (1) shall —

- (a) be made at least forty-five days before the date of discharge which would otherwise occur under section 72, but for this application;
- (b) be made by the Official Receiver in lodging of a request for termination with the court, on written notice to the debtor and to all known creditors; and
- (c) be based on the grounds referred to in subsection (3).

(3) The grounds on which an application to terminate an Order shall be limited to the following:-

- (a) the debtor did not satisfy the eligibility criteria under section 66 at the time of making of a Debt Rehabilitation Order application;
- (b) there is a material inaccuracy in the Debt Rehabilitation Order application, or in any material provided by the debtor in support of the application; or
- (c) the debtor has not complied, with the duties of debtor's set out in sections 32 and 71 to the satisfaction of the Official Receiver.

(4) On receiving an application to terminate the order, the court shall fix a date for a hearing of the application, to take place within fourteen days after the receipt of the application, or such other period as may be prescribed.

(5) The court shall provide written notice to the debtor, creditors and the Official Receiver of the hearing of the application to terminate the Order.

(6) On receiving an application to terminate the order, the court may require the Official Receiver —

- (a) to provide information to the court which may assist the court in making a determination; or
- (b) to conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to terminate the order, the court may extend the duration of the order for the limited purposes of properly considering the matter, provided that—

- (a) such extension shall not exceed a period of ninety days beyond the initial duration of the order; and
- (b) the court has due regard to —
 - (i) the need for appropriate investigation of an objection where a creditor or creditors may otherwise suffer unfair prejudice;
 - (ii) any unfairness to the debtor which might result from the extension of the order period; and
 - (iii) the extent to which an extension will further the goals of the Debt Rehabilitation Order procedure, including those specified in section 65;

(8) On the hearing of an application to terminate the order, the court shall dismiss the application to terminate the orders if it finds that the grounds referred to in subsection (3) have not been established.

(9) On the hearing of an application to terminate the order, if the court finds that any of the grounds referred to in subsection (3) have been established, the court may-

- (a) terminate the Debt Rehabilitation Order;
- (b) provide for the termination of the Debt Rehabilitation Order to take effect on such terms and at such time the court may specify;
- (c) convert the Debt Rehabilitation Order into a Bankruptcy Order under section 77; or
- (d) make an order for enforcement of an obligation of the debtor as specified in sections 32 and 71.

(10) On terminating of the Debt Rehabilitation Order under subsection (9) —

- (a) the debts that became unenforceable under section 71 on the making of the order become enforceable; and
- (b) the debtor becomes liable to pay any interest, fees or charges that may have accrued.

Conversion
into a
Bankruptcy
Order

77. (1) The Official Receiver may, while the Debt Rehabilitation Order remains in effect, apply to the court to request the conversion of the Debt Rehabilitation Order into a Bankruptcy Order.

(2) An application to convert an order under subsection (1) shall —

- (a) be made at least forty-five days before the date at which discharge would otherwise occur under section 72, but for this application;
- (b) be made by the lodging by the Official Receiver of a request for conversion with the court, on written notice to the debtor and all known creditors; and
- (c) be based on the grounds referred to in subsection (3).

(3) The Official Receiver may apply to the court to convert an order on the grounds that —

- (a) the debtor, due to a change of financial circumstances, no longer satisfies the eligibility criteria under section 66;
- (b) there is a material inaccuracy in the Debt Rehabilitation Order application, or in any material provided by the debtor in support of the application; or
- (c) the debtor has not complied, to the satisfaction of the Official Receiver, with the duties of debtor's set out in sections 32 and 71.

(4) On receiving an application to convert the order, the court shall fix a date for a hearing of this application, within fourteen days after the receipt of the application.

(5) The court shall provide written notices to the debtor, creditors and Official Receiver of the hearing of the application to convert the order.

(6) On receiving an application to convert the order, the court may require the Official Receiver —

- (a) to provide information to the court which may assist the court in making a determination; or
- (b) to conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to convert the order, the court may extend the duration of the order for the limited purposes of properly considering the matter, provided that—

- (a) such extension shall not exceed a period of ninety days beyond the initial duration of the order; and
- (b) the court has taken due regard to —
 - (i) make appropriate investigation of an objection where a creditor or creditors may otherwise suffer unfair prejudice;
 - (ii) any unfairness to the debtor which might result from the extension of the order period; and
 - (iii) the extent to which an extension will further the goals of the Debt Rehabilitation Order procedure, including those specified in section 65.

(8) On the hearing of an application to convert the order, the court shall dismiss the application to convert the order if it finds that the grounds referred to in subsection (3) have not been established.

(9) On the hearing of an application to convert the Order, if the court finds that the grounds referred to in subsection (3) have been established, the court may —

- (a) convert the Debt Rehabilitation Order into a Bankruptcy Order; or
- (b) if the court considers that the debtor ought to be given the opportunity to make arrangements for making payments towards such debts, convert the order into a Debt Protection Moratorium Order under Part III.

(10) When a Debt Rehabilitation Order is converted into a Bankruptcy Order under subsection (9), the waiting period for discharge from Bankruptcy under section 137, shall be deemed to have begun on the date of the making of the Debt Rehabilitation Order under section 70.

(11) Where a court makes an order under paragraph (b) of subsection 9, the provisions of sections 40, 41, 42 and 43 shall apply.

78. (1) This section shall apply if the Official Receiver —

Official
Receiver may
apply for
Preservation
Order

- (a) intends to apply for termination of the Debt Rehabilitation Order under section 76;
- (b) intends to apply for conversion under section 77;
or
- (c) intends to apply for revocation of discharge under section 79; and
- (d) has formed the view that the debtor has concealed assets or misled the Official Receiver.

(2) On the application of the Official Receiver, the court may make an order for the preservation of the debtor's assets pending the making of a court order under sections 76, 77 or 79.

(3) An order to preserve the debtor's assets —

- (a) may be on such terms and conditions as necessary;
and
- (b) shall be effective, unless the court determines otherwise, from the time that the order is made.

Revocation of
Debt
Rehabilitaion
Order
discharge

79. (1) The court may, on the application of the Official Receiver or a creditor, and after written notice to the debtor and a hearing, revoke a discharge that has been granted under section 73.

(2) An application to revoke a discharge under this section may only be made at a time before twelve months after the date of discharge under section 73.

(3) The court may only revoke a discharge under this section if the court is satisfied that —

- (a) the discharge was obtained through the fraud of the debtor; or
- (b) the debtor failed, with fraudulent intent, to disclose income or property to the Official Receiver, where —
 - (i) such income was not protected income under section 36; or
 - (ii) such property was not protected property under section 34,

and the applicant did not know of such fraud, or such failure to disclose, until after discharge.

(4) The revocation of a discharge shall not prejudice or affect the rights or remedies that any person other than the debtor would have had if the discharge had not been revoked.

(5) On the revocation of a discharge under this section —

- (a) the debts that were cancelled under section 73 shall be enforceable; and
- (b) the debtor shall be liable to pay any interest, fees or charges that may have accrued while the Debt Rehabilitation Order was in effect, or after the debtor was discharged.

80. (1) In accordance with section 4 of this Act, the Authority may issue rules, standards and guidelines regarding the carrying out of the role of authorised intermediaries in the operation of the Debt Rehabilitation Order procedure.

Authorised
intermediaries

(2) The Minister may authorise any person, institution, or body, to act as an authorised intermediary under this Act, in such manner as may be prescribed.

(3) In exercising its powers under subsection (1), the Authority shall have regard to the goals of the procedure as specified in section 65, and shall ensure that any rules, standards and guidance relating to authorised intermediaries facilitate access to the procedure for debtors with low levels of income and assets.

PART VI

Bankruptcy

CHAPTER 1

BANKRUPTCY APPLICATIONS AND BANKRUPTCY ORDERS

81. (1) A debtor may make an application to court in accordance with this Chapter for a Bankruptcy Order to be made in respect of such debtor.

Debtor's
application
for a
Bankruptcy
Order

(2) A debtor may make an application for a Bankruptcy Order only on the ground that the debtor is unable to pay the debts of such debtor.

(3) A debtor may not make an application for a Bankruptcy Order where the debtor has previously made an application for a previous Bankruptcy Order within six months prior to the date of the subsequent application.

Debtor to be
resident in
Sri Lanka

82. A debtor will be eligible for a Bankruptcy Order only where the debtor is resident in Sri Lanka, or at any time within three years before the date of the making of the application for a Bankruptcy Order-

- (a) was resident, or had a place of residence in Sri Lanka; or
- (b) carried on business in Sri Lanka, including through membership of a partnership or firm.

Criteria for a
Bankruptcy
Order on
debtor
application

83. (1) A debtor's application for a Bankruptcy Order shall include —

- (a) a statement of the debtor's financial affairs in accordance with section 33, the form of which may be prescribed; and
- (b) such other information as may be requested by the court.

(2) Where a debtor becomes able to pay such debtor's debts at any time between the presentation of an application for a Bankruptcy Order and the court's decision regarding the making of a Bankruptcy Order, the debtor shall notify the court of such fact.

Making of
Bankruptcy
Order on
debtor
application

84. (1) After receiving an application for a Bankruptcy Order, a court must decide within a period of one hundred and eighty days, or such other period as may be prescribed, whether —

- (a) the eligibility criteria of sections 81 and 82 are met;
- (b) the debtor is unable to pay such debts; and

- (c) no Bankruptcy Order has been made in respect of any of the debts which are the subject of the application at the date of the court decision.

(2) After receiving an application for a Bankruptcy Order, a court may at any time request the debtor to furnish any information that the court considers necessary for the purpose of deciding whether a Bankruptcy Order should be made.

(3) If the court is satisfied that the requirements of subsection (1) are met, the court shall make a Bankruptcy Order in respect of the debtor.

(4) If the court is not satisfied that the requirements of subsection (1) are met, the court shall refuse to make a Bankruptcy Order in respect of the debtor, and shall give written notice to the debtor —

- (a) of the reasons for the refusal; and
- (b) of the possibility of reviewing the decision under subsection (5).

(5) Where the court has refused to make a Bankruptcy Order, the debtor may request that the court review the available information and on this review the court shall —

- (a) confirm the refusal to make a Bankruptcy Order;
or
- (b) make a Bankruptcy Order in respect of the debtor.

(6) Where the court makes a Bankruptcy Order, it shall, as soon as reasonably practicable —

- (a) provide a copy of the order to the debtor;
- (b) provide a copy of the order to the Official Receiver; and

- (c) provide written notice of the order to each known creditor of the debtor.

(7) Where the court makes a Bankruptcy Order, the Official Receiver shall cause such details of the Bankruptcy Order as may be prescribed, including the name, address, and description of the debtor, and the date of the order, to be published -

- (a) in the Personal Insolvency Register; and
- (b) by public notice.

(8) The form of notice to be provided by the Official Receiver under subsection (6) may be prescribed.

(9) The date of the Bankruptcy Order shall, for the purposes of this Act, be the date of the commencement of the Bankruptcy.

Petition for
Bankruptcy
Order

85. (1) A party may apply for a Bankruptcy Order against a debtor in accordance with the following provisions of this Chapter.

(2) A petition for a Bankruptcy Order against a debtor under this Chapter may be presented by —

- (a) a creditor;
- (b) creditors jointly, where there are two or more creditors; or
- (c) the Official Receiver.

(3) The Official Receiver may petition for a Bankruptcy Order against a debtor —

- (a) where the court has made an order terminating a Debt Restructuring Arrangement under section 59; or

- (b) through a request for the conversion of a Debt Rehabilitation Order into a Bankruptcy Order under section 77.

86. (1) A petition for a Bankruptcy Order against a debtor may only be brought when the debtor is ineligible for a Debt Rehabilitation Order application under section 66.

Bankruptcy
Petition:
Debtor
Condition

(2) A petition for a Bankruptcy Order against a debtor may only be brought where the debtor is resident in Sri Lanka, or at any time within three years before the date of the making of the application for a Bankruptcy Order, —

- (a) was resident, or had a place of residence in Sri Lanka; or
- (b) carried on business in Sri Lanka, including through membership of a partnership or firm.

87. (1) A Bankruptcy Petition shall not be withdrawn without the leave of the court.

Bankruptcy
Petition : court
powers of
withdrawal,
stay and
dismissal

(2) When a Bankruptcy Petition is presented to the court, the court shall have power, if it appears appropriate to the court to do so on the grounds that there has been a procedural irregularity or for any other reason, the court may —

- (a) dismiss a Bankruptcy Petition; or
- (b) stay proceedings on a Bankruptcy Petition, on such terms and conditions as necessary.

(3) When a Bankruptcy Petition is presented to the court, and the court considers that it would be appropriate to allow the debtor to make a proposal for a Debt Restructuring Arrangement, the court may —

- (a) stay proceedings on the Bankruptcy Petition; and
- (b) invite the debtor to present an application for a Debt Protection Moratorium Order under Part III.

(4) At any time after the presentation of a petition and before the making of a Bankruptcy Order —

- (a) the court may stay any action, execution or other legal process against the property or person of the debtor; and
- (b) any court in which proceedings are pending against a debtor may, on proof that a petition has been presented against the debtor, either stay the proceedings or allow them to continue on such terms as it considers necessary.

(5) Where there is more than one petition for a Bankruptcy Order, and one petition has been stayed or adjourned by the court, the court may, if there is a good reason —

- (a) make a Bankruptcy Order on the petition that has not been stayed or adjourned; and
- (b) dismiss the petition that has been stayed or adjourned on terms that the court considers necessary.

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

Grounds
of Creditor
Petition

88. (1) A creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented —

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds two million rupees;
- (b) the debt is for a liquidated sum;

- (c) the debt is payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at a future time;
- (d) the debt, or each of the debts, is a debt in respect of which a pre-bankruptcy default has occurred; and
- (e) there is no outstanding application to set aside a bankruptcy notice in respect of the debt or any of the debts.

89. (1) A bankruptcy notice shall be in such form as may be prescribed, and shall —

Bankruptcy
Notice and
inability to
pay

- (a) require the debtor, in relation to a debt owed to a petitioning creditor —
 - (i) to pay the debt, including any payable interest and costs;
 - (ii) to give security for the amount owing to the satisfaction of the petitioning creditor; or
 - (iii) to compound the debt to the satisfaction of the petitioning creditor;
- (b) state the consequences of non-compliance with the bankruptcy notice; and
- (c) be served on the debtor in Sri Lanka, or with the court's permission, outside Sri Lanka.

(2) A Bankruptcy Notice shall not be invalidated by reason only that the sum specified in the Bankruptcy Notice as the amount due exceeds the amount actually due, unless-

- (a) the debtor notifies the creditor in writing that he disputes the validity of the Bankruptcy Notice because it overstates the amount actually owing; and

- (b) the debtor makes the notification within the time specified in the bankruptcy notice for the debtor to comply with the bankruptcy notice.

(3) For the purposes of paragraph (d) of subsection (1) of section 88, a pre-bankruptcy default has occurred only if, the conditions of subsection (4) or (5) are satisfied.

(4) Where a debtor owes an included debt of an amount of two million rupees or more to a petitioning creditor-

- (a) the petitioning creditor to whom the debt is owing shall be served on the debtor a Bankruptcy Notice;
- (b) after a period exceeding twenty-one days have elapsed since the date on which the Bankruptcy Notice was served; and
- (c) the Bankruptcy Notice has been neither —
 - (i) complied with; nor
 - (ii) set aside, in such manner as may be prescribed,

the Bankruptcy Order shall be deemed to be invalidated.

(5) The requirements of this subsection shall be that —

- (a) a creditor has obtained a final judgment or final order against the debtor for an amount of two million rupees or more; and
- (b) the execution or other process issued in respect of the debt has been returned unsatisfied in whole or in part.

90. (1) On receiving a petition for a Bankruptcy Order, the court may make a Bankruptcy Order if it is satisfied that conditions of sections 86, 88 and 89 have been met.

(2) The court may dismiss the petition if it is satisfied that the debtor is able to pay all 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 petition is presented;
- (b) that the acceptance of that offer would have required the dismissal of the petition; and
- (c) that the offer has been unreasonably refused.

(3) In determining for the purposes of subsection (2), whether the debtor is able to pay all the debtor's debts, the court shall take into account all debts and liabilities, present or future or certain or contingent, to which the debtor is subject on the date of the petition.

(4) Where the court makes a Bankruptcy Order, it shall, as soon as reasonably practicable, provide —

- (a) a copy of the order to the debtor;
- (b) a copy of the order to the Official Receiver; and
- (c) a written notice of the order to each known creditor of the debtor.

(5) Where the court makes a Bankruptcy Order, the Official Receiver shall cause such details of the Bankruptcy Order as may be prescribed, including the name, address, and description of the debtor, and the date of the order, to be published —

- (a) in the Personal Insolvency Register; and
- (b) by public notice.

(6) The form of notice to be provided by the courts under subsection (4) may be prescribed.

Interim
Receiver

91. (1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a petition and before the making of a Bankruptcy Order, appoint the Official Receiver to be Interim Receiver of the debtor's property.

(2) The court may make an order under subsection (1), at any time before it makes a Bankruptcy Order.

(3) As part of the order or, on the application of a creditor or the Official Receiver, subsequently, the court may authorise the Official Receiver to –

- (a) take possession of any property;
- (b) sell any perishable property or property the value of which is likely to significantly diminish if it is not immediately disposed of;
- (c) control the debtor's business or property as directed by the court; or
- (d) exercise, in relation to the debtor, any of the powers vested in the Bankruptcy Trustee under section 102, in relation to a debtor in respect of whom a bankruptcy order has been made.

(4) The court shall confine the effect of an order for the Official Receiver's control of the debtor's property or business to what is necessary, in the court's opinion, for conserving the debtor's property.

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

(6) Where an interim receiver is appointed, section 93 shall apply for the period between the appointment and the making of a Bankruptcy Order on the petition or the dismissal of the petition, as if the appointment were after the making of such an order.

(7) Where an interim receiver is appointed, section 122 shall apply as if a Bankruptcy Order had been made against the debtor.

CHAPTER 2

EFFECT OF BANKRUPTCY ORDER

92. (1) The Bankruptcy of a debtor in respect of whom a Bankruptcy Order has been made — Commencement
of Bankruptcy

- (a) commences on the day on which the order is made; and
- (b) continues until the individual is discharged under this Part.

(2) It shall be presumed that an act was done, or a transaction entered into or effected, after the date of commencement, but the presumption shall not apply if the contrary is proved.

(3) Unless a Bankruptcy Order is the subject of an appeal —

- (a) no one may later assert that the making of the Bankruptcy Order was not valid or that a prerequisite for commencement was absent; and
- (b) the Bankruptcy Order shall be binding on every person.

Stay of
proceedings
and remedies

93. (1) Subject to this section, after the making of a Bankruptcy Order, a creditor of the bankrupt debtor to whom a debt provable in the bankruptcy is owed —

- (a) shall have no remedy in respect of the debt;
- (b) shall not take any actions to recover or enforce the debt; and
- (c) in particular, shall not take any actions to -
 - (i) contact a bankrupt debtor regarding payment of a provable debt, otherwise than at the request of the debtor;
 - (ii) initiate or continue any legal proceedings against the bankrupt debtor in relation to a provable debt;
 - (iii) collect, secure, recover or demand payment of a provable debt;
 - (iv) execute or enforce a judgment or an order of a court or tribunal against the bankrupt debtor;
 - (v) obtain a warrant;
 - (vi) obtain possession of a premises in which the bankrupt debtor is residing under a tenancy agreement into which the bankrupt debtor has entered with a relevant creditor, unless the requirements of subsection (3) are met;
 - (vii) subject to subsection (10), take possession of, or otherwise recover, any goods of the type specified in paragraphs (a), (b), (c) and (d) of subsection (4) of section 34 that are used by or in the possession of, the debtor,

where the creditor is the owner or lessor of the goods; or

- (viii) instruct an agent to take any of the actions mentioned in paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii);

(2) While a Bankruptcy Order is in effect in respect of a bankrupt debtor, a court may exceptionally give permission for a creditor to take an action listed in paragraph (c) of subsection (1), where the court considers that —

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the action; and
- (b) the action will not-
 - (i) cause undue detriment to the bankrupt debtor;
 - (ii) cause unfair prejudice to any other creditor; or
 - (iii) significantly undermine the objectives of the Bankruptcy process.

(3) While a Bankruptcy Order is in effect in respect of a bankrupt debtor, a court may exceptionally give permission for a relevant creditor to obtain possession of a premises in which the bankrupt debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, only if —

- (a) the duration of the tenancy contract expires during the course of the Bankruptcy;
- (b) the debtor owes arrears of rent to a relevant creditor of an amount of more than three months of rent; and the court considers that it is more

likely than not that the debtor will be unable to maintain ongoing rent payments over the duration of the Bankruptcy; or

- (c) an application of a relevant creditor to obtain possession of the premises is based on grounds other than the debtor's non-payment of rent.

(4) Subject to subsection (6), during the bankruptcy of a bankrupt debtor, no person shall enforce an encumbrance over property of the debtor, except with –

- (a) the prior, written consent of the Bankruptcy Trustee; or
- (b) the permission of the court on such terms and conditions as necessary.

(5) The Bankruptcy Trustee is not liable in damages for declining to give consent under paragraph (a) of subsection (4).

(6) Where, before the commencement of a Bankruptcy, by way of enforcement of –

- (a) an encumbrance over property; or
- (b) a right of the owner or lessor of a property, to take possession of the property or otherwise recover it, including under a hire-purchase agreement,

a receiver, appointee or any other person may enter into possession or custody or assume control of or exercise any other power in relation to, the property of the company:

Provided that, nothing in subsection (4) and Chapter 7 shall prevent the receiver, appointee or any other person from exercising or performing a power or function under this section in relation to the property.

(7) Where, under subsections (10), (11) and (12), a creditor has continued to supply a debtor with essential goods or services, the Bankruptcy Trustee shall provide for payment to be made to the relevant creditor in respect of such continued supply, from the Bankruptcy Estate or the income of the bankrupt debtor.

(8) Where any goods of a bankrupt debtor are held by any person by way of pledge, pawn or other security —

- (a) the Official Receiver may, after giving written notice to the person of the Official Receiver's intention to do so, inspect the goods; and
- (b) where such a written notice has been given to any person, that person shall not be entitled, without leave of the court, to realise the pledge, pawn, or security unless such person has given the Bankruptcy Trustee a reasonable opportunity of inspecting the goods and of exercising the bankrupt debtor's right of redemption.

(9) Any action taken contrary to this section shall be *null and void*.

(10) While a Bankruptcy Order is in effect in respect of a debtor, a court may exceptionally give permission for a lessor or owner of goods to terminate an agreement, including a hire-purchase agreement, by means of which a debtor has possession of goods of the type specified in paragraph (a), (b), (c) or (d) of subsection (4) of section 34, where —

- (a) the debtor owes arrears under such agreement of an amount more than three monthly repayments, and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing repayments over the course of the Bankruptcy; or

- (b) an application of such lessor or owner to terminate such agreement, and to obtain possession of, or otherwise recover, the goods subject to the agreement, is based on grounds other than the debtor's default in making repayments under the agreement.

(11) While a Bankruptcy Order is in effect in respect of a debtor, a supplier of any essential goods or services shall not –

- (a) refuse to supply goods or services to a debtor, by reason of the debtor's default in paying charges due for the goods or services in relation to a period before the commencement of the Bankruptcy;
- (b) make it a condition of the supply of the goods or services to a debtor, that payment be made of outstanding charges due for the goods or services in relation to a period before the commencement of the Bankruptcy; or
- (c) rely on an insolvency-related term of the agreement for the supply of the goods or services, except with the prior, written consent of the Bankruptcy Trustee.

(12) The Bankruptcy Trustee may give consent under paragraph (c) of subsection (11) where it is satisfied that the reliance on the insolvency-related term serves the interests of the bankrupt debtor and creditors as a whole.

(13) The Bankruptcy Trustee is not liable in damages for declining to give consent under paragraph (c) of subsection (11).

Statement of
the
debtor's
financial
affairs

94. (1) After commencement of the Bankruptcy, the bankrupt debtor shall file with the Official Receiver a statement of the debtor's financial affairs in accordance with section 33, unless such debtor has already filed a statement under section 83.

(2) Where no statement of the debtor's financial affairs has been filed or, in the Official Receiver's view, no sufficient statement of such financial affairs has been filed under this section or section 83, the Official Receiver shall, as soon as practicable after commencement of the Bankruptcy, send to the bankrupt debtor a written notice stating –

- (a) that the bankrupt debtor shall file a statement of the debtor's financial affairs, in such form as may be prescribed; and
- (b) the time when the statement shall be filed.

(3) The Official Receiver shall send the written notice to the address of the bankrupt debtor given in the petition for a Bankruptcy Order or the bankrupt debtor's last known address and the debtor's last known electronic mail address, if any.

(4) The bankrupt debtor shall file the statement of the debtor's financial affairs with the Official Receiver within twenty-one days after –

- (a) the commencement of the Bankruptcy; or
- (b) receiving the Official Receiver's written notice under subsection (2).

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

95. (1) The Official Receiver may, after commencement of the Bankruptcy, call a meeting of the bankrupt debtor's creditors, where the Official Receiver considers it necessary—

Meeting of
creditors in
exceptional
cases

- (a) due to the exceptionally high value of assets potentially available for distribution to creditors in the case; or

- (b) due to the existence of any other exceptional circumstances which will serve the proportionate and just resolution of the case.

(2) If the Official Receiver elects to call a meeting of creditors, the meeting shall be called as soon as practicable after commencement and, unless there are special circumstances, not less than thirty five days thereafter, by sending a written notice of the time and place of the meeting to –

- (a) the debtor, at the debtor's last known physical and electronic mail address;
- (b) each creditor named in the statement of the debtor's financial affairs, at the physical and electronic mail address given in the statement of financial affairs or at any other address that the Official Receiver believes is the creditor's address; and
- (c) any other creditor known to the Official Receiver.

(3) The Fifth Schedule shall apply to the calling, holding and effect of any meeting of creditors.

(4) The Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

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

(6) A meeting of creditors and the resolutions passed at the meeting are valid even if some creditors did not receive the written notice of the meeting, unless the court orders otherwise.

96. (1) Where a Bankruptcy Order has been made, the Official Receiver or Bankruptcy Trustee may at any time before the discharge of the bankrupt debtor apply to the court for the public examination of the bankrupt debtor, where the Official Receiver or Bankruptcy Trustee considers it necessary due to the exceptionally high value of assets potentially available for distribution to creditors in the case, and —

Public
Examination
of bankrupt
in exceptional
cases

- (a) there is a material inaccuracy in the statement of the debtor's financial affairs, which ought to be questioned in public; or
- (b) the bankrupt debtor has failed to comply with the responsibilities of debtors under sections 32, 94, 112, 113, 114 or any other relevant provision of this Act.

(2) On an application under subsection (1), the court shall direct that a public examination of the bankrupt debtor shall be held on a day appointed by the court. The bankrupt debtor shall attend court on that day and be publicly examined as to his affairs, dealings and property.

(3) The following may take part in the public examination of the bankrupt debtor and may ask questions concerning any affairs, dealings and property, namely—

- (a) the Official Receiver;
- (b) the Bankruptcy Trustee, if such Trustee's appointment has taken effect; and
- (c) any creditor of the bankrupt who has submitted a proof in the bankruptcy.

(4) If a bankrupt debtor without reasonable excuse fails at any time to attend a public examination under this section, the court may, for the purpose of bringing that person and

anything in such person's possession before the court, cause a warrant to be issued —

- (a) for the arrest of the bankrupt debtor; and
- (b) for the seizure of any books, papers, records, money or goods in the bankrupt debtor's possession.

(5) The court may authorise a bankrupt debtor arrested under a warrant issued under subsection (4) to be kept in custody, and anything seized under such a warrant to be held, until the bankrupt debtor is brought before the court under the warrant which shall occur as soon as practicable.

(6) Under this section, the court may also, on the application of the Official Receiver or the Bankruptcy Trustee, summon to appear before it —

- (a) the spouse or former spouse of the bankrupt debtor;
- (b) any person known or believed to have any property comprised in the Bankruptcy Estate in ones possession;
- (c) any person known or believed to be indebted to the bankrupt debtor; and
- (d) any person appearing to the court to be able to give information concerning the bankrupt debtor or the dealings, affairs or property of the bankrupt debtor but subject to legal advice privilege or litigation privilege.

(7) Where the court has summoned a person to appear before it under subsection (6), the provisions of this section shall apply to such person as if the person is a bankruptcy debtor.

(8) Where it appears to the court, on consideration of any evidence obtained under this section, that any person has in his possession any property comprised in the Bankruptcy Estate, the court may, on the application of the Official Receiver or the Bankruptcy Trustee, order that person to deliver such property to the Official Receiver or the Bankruptcy Trustee at such time, in such manner, and on such conditions as the court considers fit.

(9) Where it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the bankrupt debtor, the court may, on the application of the Official Receiver or the Bankruptcy Trustee, order that person to pay to the Official Receiver or the Bankruptcy Trustee at such time, in such manner, and on such conditions as the court considers fit, the whole or part of the amount due.

CHAPTER 3

APPOINTMENT OF OFFICIAL RECEIVER AND BANKRUPTCY TRUSTEE

97. (1) On the making of a Bankruptcy Order, the Official Receiver becomes trustee of the property of the bankrupt debtor (hereinafter referred to as the “Bankruptcy Trustee”), unless the court appoints another person under subsection (2).

Official
Receiver
becomes
Bankruptcy
Trustee

(2) If, when the Bankruptcy Order is made, there is a personal insolvency administrator of a Debt Restructuring Arrangement in respect of the debtor under Part IV the court may on making the Bankruptcy Order appoint the personal insolvency administrator of the Arrangement as Bankruptcy Trustee.

(3) Where a person becomes Bankruptcy Trustee under this section, the person must give written notice of that fact to the bankrupt debtor’s creditors or, if the court so allows, advertise it in accordance with the court’s directions.

Appointment
of Trustees

98. (1) It shall be possible for creditors to appoint, by a resolution of a majority in value of creditors, some fit person other than the Official Receiver as Bankruptcy Trustee.

(2) A person shall be deemed fit to act as Bankruptcy Trustee where such person -

- (a) has not been previously removed from the office of Bankruptcy Trustee for misconduct or neglect of duty;
- (b) is not or has not been within the period of two years immediately preceding the date of commencement of the Bankruptcy being a creditor of the debtor;
- (c) is qualified under section 12 to be appointed and act as a key office holder with respect to the Bankruptcy;
- (d) has certified in writing that the person is qualified under section 12 to be appointed and act as a key office holder with respect to the Bankruptcy; and
- (e) has consented in writing to the appointment as a Bankruptcy Trustee and has not withdrawn consent at the time of appointment.

(3) On an application to court by a creditor of the bankrupt debtor, the court shall confirm the appointment of the Bankruptcy Trustee, unless the court considers that —

- (a) the appointment has not been made by a majority in value of the creditors voting;
- (b) the person appointed is not fit to act as trustee in accordance with subsection (2); or
- (c) the relationship between the person and the bankrupt debtor, the property of the bankrupt

debtor, or the creditor makes it difficult for the person to act with impartiality and in furtherance of the goals of the bankruptcy process.

(4) On approving an application for the appointment of a person as Bankruptcy Trustee under subsection (3), the court shall issue a certificate confirming this person's appointment.

(5) The appointment of a Bankruptcy Trustee shall take effect as from the date of the certificate.

(6) A person who, with the person's consent, is appointed or acts as a Bankruptcy Trustee knowing that any of the requirements of paragraph (a), (b) or (c) of subsection (2) has not been met, commits an offence.

99. (1) Under this section, a person other than the Official Receiver who has been appointed as Bankruptcy Trustee may be removed from office.

Removal of
Trustee and
vacation of
office

(2) A Bankruptcy Trustee may be removed only by —

(a) an order of the court; or

(b) a resolution of a majority in value of creditors at a meeting convened specially for the purpose of removing a trustee.

(3) Where the creditors of the bankrupt debtor decide to remove a Bankruptcy Trustee, they may appoint another person as Trustee to act in his place, in accordance with section 98.

(4) Where the decision to remove a Bankruptcy Trustee is made under subsection (3), the decision does not take effect until the creditors of the bankrupt debtor appoints another person as Trustee in his place.

(5) The Bankruptcy Trustee, not being the Official Receiver, shall vacate office if such Trustee -

- (a) ceases to be a fit person in accordance with section 98; or
- (b) ceases to satisfy any qualifications as may be prescribed.

(6) On an application by a bankrupt debtor, a creditor, or the Official Receiver, the court can remove a Trustee on the grounds of misconduct or neglect of duty.

(7) The Bankruptcy Trustee may resign from office by giving written notice of such resignation to the court and the Official Receiver.

(8) The Bankruptcy Trustee shall vacate office if the Bankruptcy Order is annulled.

(9) During any vacancy in the office of Bankruptcy Trustee, the Official Receiver shall act as the Bankruptcy Trustee.

Release of
Trustee

100. (1) Where the Official Receiver has ceased to be the Bankruptcy Trustee and a person is appointed instead, the Official Receiver shall have such release with effect from the time at which the court issues a certificate of the appointment of a Bankruptcy Trustee under section 98.

(2) If the Official Receiver, while being the Trustee, gives written notice to the court that the administration of the Bankruptcy Estate is for practical purposes complete, the Official Receiver shall be released with effect from such time as the court may determine.

(3) A person other than the Official Receiver who has ceased to be the Bankruptcy Trustee shall have such release with effect from the following times:-

- (a) where the person has died, the time at which written notice is given to the court and Official Receiver that person has ceased to hold office;
 - (b) in the following cases, twenty eight days after the time at which written notice is given to the court and Official Receiver that person has ceased to hold office -
 - (i) the person has been removed from office by a decision of the bankrupt's creditors under section 99 and the creditors have not decided against his release; or
 - (ii) the person has resigned under subsection (7) of section 99;
 - (c) in the following cases, such time as the court may, on an application by the person, determine—
 - (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have decided against such release;
 - (ii) the person has vacated office under subsection (5) of section 99; or
 - (iii) the person has been removed from office by the court.
- (4) the person is removed from office by a decision of the bankrupt debtor's creditors, any decision of the bankrupt debtor's creditors as to whether the person shall be released, shall be made by a resolution of a majority in value of creditors.
- (5) Where a Bankruptcy Order is annulled, the Bankruptcy Trustee at the time of the annulment is released with effect from such time, as the court may determine.

(6) Where the Official Receiver or the Bankruptcy Trustee has been released under this section, the Official Receiver or Bankruptcy Trustee shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability.

CHAPTER 4

FUNCTIONS AND DUTIES OF BANKRUPTCY TRUSTEE

General
functions and
official title of
Bankruptcy
Trustee

101. (1) The “Bankruptcy Trustee” is the trustee in bankruptcy of the Bankruptcy Estate, and has the description, functions, duties, and powers specified in this section and in any other provisions of this Act.

(2) This Chapter applies in relation to any Bankruptcy where either—

- (a) the appointment of a person as Bankruptcy Trustee takes effect; or
- (b) the Official Receiver becomes the Bankruptcy Trustee.

(3) The function of the Bankruptcy Trustee is to get in, realise and distribute the Bankruptcy Estate in accordance with the following provisions of this Part. In the carrying out of that function and in the management of the Bankruptcy Estate the Bankruptcy Trustee is entitled, subject to those provisions, to use ones own discretion.

(4) It is the duty of the Bankruptcy Trustee, if such trustee is not the Official Receiver—

- (a) to furnish the Official Receiver with such information;
- (b) to produce to the Official Receiver, and permit inspection by the Official Receiver of, such books, papers and other records; and

(c) to give the Official Receiver such other assistance,

as the Official Receiver may reasonably require for the purpose of enabling the Trustee to carry out the functions and duties in relation to the Bankruptcy.

(5) The official name of a Bankruptcy Trustee shall be "the Bankruptcy Trustee of the property of [inserting the name of the bankrupt debtor]", and by that name the Bankruptcy Trustee may, in any part of Sri Lanka or elsewhere—

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;
- (d) enter into any engagements binding oneself and any successors in office; and
- (e) do all such other acts necessary or expedient to be done in the execution of his office.

102. (1) The Bankruptcy Trustee may exercise any of the following powers:-

Powers of
Bankruptcy
Trustee

- (a) the power to carry on any business of the bankrupt debtor 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;
- (b) the power to bring, institute or defend any action or legal proceedings relating to the property comprised in the Bankruptcy Estate;
- (c) the power to accept as the consideration for the sale of any property comprised in the Bankruptcy Estate a sum 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;

- (d) the power to mortgage or pledge any part of the property comprised in the Bankruptcy Estate for the purpose of raising money for the payment of the bankrupt debtor's debts;
- (e) the power, where any right, option or other power forms part of the Bankruptcy Estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power;
- (f) the power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy;
- (g) the power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the Bankruptcy Estate made or capable of being made on the Bankruptcy Trustee by any person;
- (h) the power to sell any part of the property for the time being comprised in the Bankruptcy Estate, including the goodwill and book debts of any business;
- (i) the power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt debtor and any person who may have incurred any liability to the bankrupt debtor;

- (j) the power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the Bankruptcy Estate made or capable of being made by the Bankruptcy Trustee on any person;
- (k) the power to give receipts for any money received by the Bankruptcy Trustee, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application;
- (l) the power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt debtor as are comprised in his estate; and
- (m) the power to exercise in relation to any property comprised in the Bankruptcy Estate any powers the capacity to exercise which is vested in the Bankruptcy Trustee under this Part of this Act.

(2) For the purposes of, or in connection with, the exercise of any of his powers under this Part, the Bankruptcy Trustee may, by his official name—

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;
- (d) enter into engagements binding on oneself and, in respect of the Bankruptcy Estate, on any successors in office;
- (e) employ an agent;
- (f) execute any power of attorney, deed or other instrument,

and such trustee may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

Creditor's
committee in
cases where
the Official
Receiver
is not the
Bankruptcy
Trustee

103. (1) Subject to subsections (2) and (3), a bankrupt debtor's creditors may, in accordance with any procedure as may be prescribed, establish a committee (known as "the creditors' committee") to perform the functions conferred on it by or under this Act.

(2) The bankrupt debtor's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the Official Receiver is the Bankruptcy Trustee.

(3) With respect to a creditors' committee, the following matters shall be subject to such requirements, restrictions and limitations as may be prescribed : –

- (a) membership and termination of membership of the committee;
- (b) notice of the establishment of the committee and of matters relating to the committee;
- (c) the procedure for convening meetings of the committee;
- (d) protection of acts, omissions or decisions done or made by members of the committee;
- (e) reimbursement of expenses of members of the committee; and
- (f) transactions by members of the committee and their related parties.

Court review
of action of
Bankruptcy
Trustee

104. (1) If any person, including the bankrupt debtor and any of the debtor's creditors, is dissatisfied by any act, omission or decision of a Bankruptcy Trustee, the person may apply to the court.

(2) On an application under subsection (1) the court may-

- (a) confirm, reverse or modify any act or decision of the Bankruptcy Trustee;
- (b) may give the Bankruptcy Trustee directions; or
- (c) may make such other order as necessary.

(3) The Bankruptcy Trustee may apply to the court for directions in relation to any matter arising under the Bankruptcy.

105. (1) The Bankruptcy Trustee may charge remuneration for carrying out the duties and exercising the powers as Bankruptcy Trustee at the amount or rates-

Bankruptcy
Trustee
remuneration,
expenses and
costs

- (a) fixed by the court; or
- (b) charged according to rates as may be prescribed.

(2) All bills and charges of attorneys-at-law, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such attorney-at-law and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in case of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

106. (1) Whenever required by any creditor to do so, the Bankruptcy Trustee —

Application
for a Debt
Rehabilitation
Order

- (a) shall provide the creditor with a list of the creditors in the Bankruptcy showing the amount of the debt due to each creditor; and

- (b) shall be entitled to charge for such list such sum as may be prescribed.

(2) Whenever requested by a resolution of the majority in value of creditors, the Bankruptcy Trustee shall —

- (a) provide any requesting creditor with a statement of the accounts up to the date of such request; and
- (b) be entitled to charge for the provision of such accounts such sum as may be prescribed, which may be repaid to any requesting creditor from the Bankruptcy Estate if the court so directs.

(3) The Bankruptcy Trustee shall maintain proper books in such manner as may be prescribed.

(4) Any creditor of the bankrupt debtor, subject to the control of the court, may inspect any books maintained under subsection (3).

(5) Where the Bankruptcy Trustee is a person other than the Official Receiver, the Bankruptcy Trustee shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the Bankruptcy, transmit to the Official Receiver a statement showing the proceedings in the Bankruptcy up to the date of the statement.

(6) Particulars to be included in the Official Receiver's statement under subsection (5), and the form of such statement, may be prescribed.

(7) The Official Receiver —

- (a) shall examine the statements transmitted under subsection (5);
- (b) shall call the Bankruptcy Trustee to account for any misfeasance, neglect or omission, which may

appear on the said statements or in his accounts or otherwise; and

- (c) may require the Bankruptcy Trustee to make good any loss which the Bankruptcy Estate may have sustained by the misfeasance, neglect or omission.

107. (1) Every Bankruptcy Trustee shall, at such times as may be prescribed or ordered by a court, but not less than twice in each year during the tenure of office, send to the Official Receiver an account of the receipts and payments as such Trustee.

Audit of
Bankruptcy
Trustee
accounts

(2) The account shall —

- (a) be in a form prescribed or ordered by a court; and
- (b) be verified by statutory declaration in the prescribed form.

(3) If the Official Receiver considers it necessary, for the proportionate and just resolution of the case, shall cause the accounts so sent to be audited.

(4) For the purposes of an audit under subsection (3), the Bankruptcy Trustee shall furnish the auditor with such information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the Trustee.

(5) When any such account has been audited, a copy shall be filed and kept by the Official Receiver, and another copy shall be filed with the court, and each copy shall be open to the inspection by a creditor, the bankrupt debtor, or any person interested.

108. (1) The Bankruptcy Trustee shall pay all money received by the Trustee into an account or accounts established for the purpose at one or more banks.

Duty of
Bankruptcy
Trustee in
relation to
money

(2) Rules regarding the payment of funds into a bank account by the Bankruptcy Trustee may be prescribed.

(3) The Bankruptcy Trustee may invest money that is not immediately required to be paid out in the administration of an estate in financial products, to such extent (if any) and subject to such terms and conditions as may be prescribed.

(4) The Bankruptcy Trustee shall not pay any money received, into a personal bank account of the Bankruptcy Trustee.

CHAPTER 5

DEBTS IN BANKRUPTCY

Debts
provable in
Bankruptcy

109. (1) Only debts defined as included debts under section 37 shall be provable in a Bankruptcy.

(2) A debt defined as an excluded debt under section 37 shall not be provable in a Bankruptcy.

(3) Subject to this section, the proof of any debt provable in Bankruptcy by a secured or unsecured creditor of the bankrupt debtor and the admission or rejection of any proof shall take place in accordance with section 426.

(4) A secured creditor holding a fixed security over property of the Bankruptcy Estate may —

- (a) rely on the security, while leaving the property in the possession or control of the Bankruptcy Trustee;
- (b) enforce the security, where the secured creditor is entitled to do so; or

- (c) surrender the property subject to the security to the Bankruptcy Trustee for the benefit of the creditors as a whole and claim as an unsecured creditor for the whole debt.

(5) Subject to subsection (5) of section 34 a secured creditor who exercises the option referred to in paragraph (b) of subsection (4) shall give account to the Bankruptcy Trustee for any surplus remaining from the net amount realised, after satisfaction of –

- (a) any debt owing to the grantee of any fixed security over any part of the property that ranks prior to the secured creditor's fixed security, determined as at the commencement of the Bankruptcy; and
- (b) the full amount of the debt, determined as at the commencement of the Bankruptcy.

(6) Where the Bankruptcy Trustee considers it necessary, a Bankruptcy Trustee may by written notice require a secured creditor within twenty working days after receiving the written notice –

- (a) to exercise the option referred to in paragraph (b) of subsection (4) or the option referred to in paragraph (c) of subsection (4); and
- (b) if the creditor elects to exercise the option referred to in paragraph (b) of subsection (6), to do so within that period.

(7) A secured creditor on whom a notice has been served under subsection (6) and who fails to comply with the notice —

- (a) is to be taken as having surrendered the property subject to the security to the Bankruptcy Trustee for the benefit of the creditors as a whole; and

- (b) may claim as an unsecured creditor for the whole debt.

Mutual credit
and set-off

110. Section 427 applies to situations in which there have been mutual credits, mutual debts or other mutual dealings between a Bankrupt debtor and a person who seeks or, but for the operation of that section, may seek to have a claim admitted in a Bankruptcy.

Priority of
debts in
Bankruptcy

111. (1) A Bankruptcy Trustee shall apply the proceeds of realisation of the Bankruptcy Estate in or towards the satisfaction of the claims, determined as at the commencement of the Bankruptcy, set out in the Fourth Schedule to the extent and in the order of priority specified in that Schedule.

(2) Without prejudice to paragraph 8 of the Fourth Schedule “Bankruptcy Estate” in subsection (1) shall not include property subject to an encumbrance unless the secured creditor-

- (a) has surrendered the property subject to the security under subsection (4) of section 109; or
- (b) has not surrendered the property subject to the security under subsection (4) or (5) of section 109 but has confirmed to the Bankruptcy Trustee that it does not intend to enforce the security.

(3) After paying claims in accordance with subsection (1), the Bankruptcy Trustee shall apply the proceeds of realisation of the Bankruptcy Estate in or towards the satisfaction of general claims, determined as at the commencement of the Bankruptcy.

(4) The claims referred to in subsection (3) rank equally among themselves and shall be satisfied in full unless the proceeds of realisation of the Bankruptcy Estate are insufficient to satisfy them, in which case the proceeds shall abate rateably among all such claims.

(5) After paying claims in accordance with subsection (3), interest as from the commencement of the Bankruptcy calculated in such manner as may be prescribed shall be paid on the claims referred to in subsections (1) and (3).

(6) The claims referred to in subsection (5) rank equally among themselves with respect to the interest referred to in that subsection, and such interest shall be paid in full unless the proceeds of realisation of the Bankruptcy Estate are insufficient to pay it, in which case the proceeds shall abate rateably among all of the claims referred to in that subsection with respect to that interest.

(7) After paying claims in accordance with subsection (5), the Bankruptcy Trustee shall apply the surplus proceeds of realisation of the Bankruptcy Estate to the Bankrupt debtor.

(8) Where, before the commencement of Bankruptcy, a creditor has agreed to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section shall prevent the agreement from having effect according to its terms.

CHAPTER 6

DUTIES OF DEBTOR IN BANKRUPTCY

112. A bankrupt debtor in respect of whom a Bankruptcy Order has been made shall be subject to the obligations of debtors under personal insolvency procedures under section 32.

General responsibilities of bankrupt debtor

113. (1) In addition to the duties specified in section 32, a bankrupt debtor in respect of whom a Bankruptcy Order has been made shall, to the utmost of such debtors power, aid in the realisation of the Bankrupt debtor's property and the distribution of the proceeds amongst creditors and shall –

Obligations of debtor as to discovery and realisation of property

- (a) attend before the Bankruptcy Trustee whenever called upon to do so; and, if required to do so by the Bankruptcy Trustee, verify any statement by affidavit;
- (b) execute such power of attorney, transfer or instrument, in relation to such property and the distribution of the proceeds amongst the creditors, as are required by the Bankruptcy Trustee;
- (c) deliver on demand any of the bankrupt debtor's property, other than protected property, that is divisible amongst creditors and is under the bankrupt debtor's possession or control to the Bankruptcy Trustee;
- (d) deliver on demand to the Bankruptcy Trustee any property, other than protected property, that is acquired by the bankrupt debtor before discharge; and
- (e) deliver on demand to the Bankruptcy Trustee any income due and owing under a Bankruptcy Repayment Order or Bankruptcy Repayment Agreement.

(2) A bankrupt debtor shall, even after discharge from Bankruptcy, continue to cooperate with any request that the Bankruptcy Trustee may reasonably require for the purposes of carrying out the necessary functions under this Act.

Financial
information

114. (1) The bankrupt debtor shall provide the Bankruptcy Trustee with the information and details that are reasonably necessary to prepare a statement of the financial position of the debtor's estate.

(2) Where the Bankruptcy Trustee considers it necessary to assess the proportionate use of resources, the Trustee may require the bankrupt debtor to assist in the preparation of

the full, true, and detailed accounts and statements of the bankrupt debtor's financial position, showing details of —

- (a) the bankrupt debtor's trading and stocktaking; and
- (b) the bankrupt debtor's profit and losses during any period in the three years before the commencement.

(3) Where required by the Bankruptcy Trustee, the bankrupt debtor shall, within a reasonable time following a request from the Bankruptcy Trustee, prepare and provide to the Bankruptcy Trustee, details necessary to prepare the accounts and statements specified in subsection (2) to the extent possible.

(4) For the bankrupt debtor to prepare the accounts and statements referred to in subsection (2) —

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

CHAPTER 7

PROPERTY OF DEBTOR IN BANKRUPTCY

115. (1) The property of the bankrupt debtor divisible amongst the creditors, and in this Act referred to as the Bankruptcy Estate, shall not comprise any of the protected property specified in sections 34 and 35.

Description of
Bankruptcy
Estate

(2) Subject to subsection (1), the Bankruptcy Estate shall comprise —

- (a) all property belonging to or vested in the bankrupt debtor at the commencement of the Bankruptcy; and
- (b) any property which, by virtue of any of the following provisions of this Chapter, forms part of that estate or is treated as forming part of that estate.

(3) In this Chapter, property, in relation to the bankrupt debtor, includes reference to any power exercisable by the bankrupt debtor over or in respect of property in or outside Sri Lanka for the bankrupt debtor's own benefit.

(4) For the purposes of this Chapter, property which forms part of the Bankruptcy Estate —

- (a) does so subject to the rights of any person other than the bankrupt debtor; and
- (b) a secured creditor may take possession of and realise and otherwise deal with property over which he has a security, disregarding any rights the secured creditor has surrendered under section 109 or in such manner as may be prescribed.

(5) This section shall apply to any other enactment under which any property is to be excluded from a bankrupt debtor's estate.

Vesting of
property in
Bankruptcy
Trustee

116. (1) Until a Bankruptcy Trustee is appointed,

- (a) the Official Receiver shall, in accordance with section 97 be the Bankruptcy Trustee for the purposes of this Act; and

- (b) immediately on a Bankruptcy Order being made, the Bankruptcy Estate shall vest in the Official Receiver.

(2) On the appointment of a person other than the Official Receiver as Bankruptcy Trustee, the Bankruptcy Estate shall vest immediately in the Bankruptcy Trustee appointed.

(3) Where any property which is, or is to be, comprised in the Bankruptcy Estate vests in the Official Receiver, whether under this section or under any other provision of this Chapter, it shall so vest without any conveyance, assignment or transfer.

(4) The certificate of appointment of a Bankruptcy Trustee shall for all purposes of any law in force in any part of Sri Lanka requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property and may be registered and recorded accordingly.

117. (1) Subject to sections 34, 35 and 115, between the commencement of the Bankruptcy and the discharge of the debtor all property, excluding protected property, that the bankrupt debtor acquires or that passes to the bankrupt debtor shall constitute after-acquired property.

After-
Acquired
property

(2) All after-acquired property shall vest in the Bankruptcy Trustee.

(3) The powers that the bankruptcy debtor could have exercised in, over, or in respect of after-acquired property for the bankrupt debtor's own benefit shall vest in the Bankruptcy Trustee.

(4) For the avoidance of doubt —

- (a) income of the bankrupt debtor shall not constitute after-acquired property; and

- (b) income of the bankrupt debtor shall only be claimed for the Bankruptcy Estate through the means specified in sections 125 and 126.

Possession of
Property by
Bankruptcy
Trustee

118. (1) The Bankruptcy Trustee shall, as soon as may be, take possession of books, documents and other records which relate to the property or affairs of the bankrupt debtor, which —

- (a) belong to the bankrupt debtor; or
- (b) are in the possession or under the control of the bankrupt debtor.

(2) The Bankruptcy Trustee shall, in relation to and for the purpose of acquiring or retaining possession of the Bankruptcy Estate, be in the same position as if the Bankruptcy Trustee were a receiver of the property appointed by the court, and the court may, on an application, enforce such acquisition or retention accordingly.

(3) Where any part of the Bankruptcy Estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of any company, office, or person, the Bankruptcy Trustee may exercise the right to transfer the property to the same extent as the bankrupt debtor might have exercised if such bankrupt debtor had not become bankrupt.

(4) Where any part of the Bankruptcy Estate consists of things in action —

- (a) such things shall be deemed to have been duly assigned to the Bankruptcy Trustee; and
- (b) notice of the deemed assignment need not be given except in so far as it is necessary, in case where the deemed assignment is from the bankrupt debtor, for protecting the priority of the Bankruptcy Trustee.

(5) In addition to the general duties of the bankrupt debtor under section 112 the bankrupt debtor shall deliver up to the Bankruptcy Trustee possession of any property, books, papers or other records of which the bankrupt debtor has possession or control and of which the Bankruptcy Trustee is required to take possession.

(6) Any person, being a banker or agent of the bankrupt debtor or any other person who holds any property to the account of, or for, the bankrupt debtor, shall pay or deliver to the Trustee -

- (a) all property in such person's possession or under his or her control which forms part of the Bankruptcy Estate; and
- (b) which such person is not by law entitled to retain as against the bankrupt debtor or Bankruptcy Trustee.

(7) If any of the following is in possession of any property, books, papers or other records of which the Bankruptcy Trustee is required to take possession, namely—

- (a) the Official Receiver;
- (b) a person who has ceased to be Trustee of the Bankruptcy Estate; or
- (c) a person who has been the personal insolvency administrator of a Debt Restructuring Arrangement approved in relation to the bankrupt debtor under Part IV,

that person shall deliver up possession of the property, books, papers or records to the Bankruptcy Trustee.

(8) If any person without reasonable excuse fails to comply with any obligation imposed by this section, such

person is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which such person may be subject.

Seizure of
property of
bankrupt

119. (1) At any time after a Bankruptcy Order has been made, the court may, on the application of the Official Receiver or the Bankruptcy Trustee, issue a warrant authorising the Official Receiver, the Bankruptcy Trustee, or an agent of such parties as authorised by the court, to seize any property comprised in the Bankruptcy Estate, or any books, papers or records relating to the Bankruptcy Estate which are, in the possession or under the control of the bankrupt debtor or any other person who is required to deliver the property, books, papers or records to the Bankruptcy Trustee.

(2) A warrant issued under subsection (1) may direct that the Bankruptcy Trustee shall be provided with reasonable access to the physical and electronic mail of the bankrupt debtor, where required for the performance of the functions of the Bankruptcy Trustee and the administration of the Bankruptcy Estate.

(3) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the Bankruptcy Estate or any books, papers or records relating to the Bankruptcy Estate, break open —

- (a) any premises where the bankrupt debtor is or anything that may be seized under the warrant is or is believed to be; and
- (b) any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(4) If, after a Bankruptcy Order has been made, the court is satisfied that any property comprised in the Bankruptcy Estate, or any books, papers or records relating

to the Bankruptcy Estate are concealed in any premises not belonging to the bankrupt debtor, the court may issue a warrant authorising any police officer or officer of the court to search those premises for the property, books, papers or records.

(5) A warrant under subsection (4) shall not be executed except in accordance with its terms.

(6) Procedures for the execution of a warrant issued under subsection (4) may be as prescribed.

120. The Bankruptcy Trustee may disclaim onerous property in accordance with sections 334 and 335.

Disclaimer
of onerous
property

121. (1) The Bankruptcy Trustee, with permission of the court or when a resolution of a majority in value of creditors so authorises, may appoint the bankrupt debtor himself -

Power to
allow debtor
to manage
property

- (a) to superintend the management of the Bankruptcy Estate or of any part thereof; or
- (b) to carry on the trade (if any) of the bankrupt debtor for the benefit of the creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the Bankruptcy Trustee may direct;
- (c) where the Bankruptcy Trustee considers that so doing does not harm the interests of the creditors as a whole.

(2) Where a Bankruptcy Trustee has sought the permission of the court under subsection (1), the court shall grant such permission only where it is satisfied that so doing does not harm the interests of the creditors as a whole.

Goods on hire
purchase

122. (1) Where –

- (a) the bankrupt debtor acquired possession of goods under a hire-purchase agreement before commencement of the Bankruptcy; and
- (b) a creditor –
 - (i) took possession of the goods within twenty one days before commencement of the Bankruptcy, and after commencement of the Bankruptcy still possesses them; or
 - (ii) takes possession of the goods after commencement,

the creditor shall not sell or dispose of the goods or part with possession of them (except for storage or repair), until twenty eight days after the date of commencement of the Bankruptcy, unless the Bankruptcy Trustee consents in writing to the creditor selling or disposing or parting with possession of the goods before the expiry of that period.

(2) The Bankruptcy Trustee may, notwithstanding any provision of the hire purchase agreement–

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

(3) Where –

- (a) a creditor has taken possession of goods purchased under a hire purchase agreement, whether before or after the commencement of the bankrupt debtor's Bankruptcy; and
- (b) the Bankruptcy Trustee has not taken any action under subsection (2),

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

(4) Where –

- (a) the bankrupt debtor purchased goods under a hire purchase agreement, before commencement of the Bankruptcy; and
- (b) at the date of commencement of the Bankruptcy the creditor –
 - (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 it does so, may prove in the Bankruptcy for the net balance due to the creditor under the agreement.

123. (1) This section applies where –

- (a) the Bankruptcy Trustee has seized or disposed of any property in the possession or on the premises of a bankrupt debtor; and
- (b) the Bankruptcy Trustee had no notice of any claim by any person in respect of the property.

Protection
of Official
Receiver and
Trustee from
liability in
certain cases

(2) No suit, prosecution or other legal proceeding shall lie against –

- (a) the Bankruptcy Trustee for any loss or damage arising from such seizure or disposal sustained by any person claiming such property; and
- (b) the Bankruptcy Trustee shall not be liable for the costs of any proceedings taken to establish a claim in respect of such property,

where the Bankruptcy Trustee has seized or disposed of property in good faith in the circumstances specified in subsection (1), and the Bankruptcy Trustee subsequently gives notice that the said property was not, at the date of the commencement of the Bankruptcy, the property of the bankrupt debtor.

Second
Bankruptcy

124. (1) Where, before discharge, a Bankruptcy Order is made in respect of the bankrupt debtor for a second time –

- (a) subject to subsection (2), any property that is acquired by, or has passed to, the bankrupt debtor since the first Bankruptcy, including property acquired or that has passed since the second Bankruptcy, shall be vested in the Bankruptcy Trustee in the second Bankruptcy; and
- (b) any surplus in the second Bankruptcy is an asset in the estate in the first Bankruptcy, and shall be paid to the Bankruptcy Trustee in the first Bankruptcy.

(2) The court may, if it considers it appropriate, order that the following assets or their proceeds shall 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 creditor in the second Bankruptcy; and

- (b) assets in the second Bankruptcy that devolved upon the bankrupt debtor.

(3) Where the Bankruptcy Trustee receives written notice that a creditor has filed a petition for a second Bankruptcy, he shall –

- (a) hold property in possession that has been acquired by, or passed to, the bankrupt debtor since the first Bankruptcy until the application for a second Bankruptcy has been dealt with; and
- (b) transfer the property and its proceeds, less any deduction for the Bankruptcy Trustee’s fees, costs, charges and expenses, to the Bankruptcy Trustee in the second Bankruptcy where the creditor’s petition results in a second Bankruptcy, or if a Bankruptcy Order is made in respect of the debtor on his own application.

125. (1) The court may make a Debt Repayment Order claiming for the Bankruptcy Estate so much of the income of the bankrupt debtor during the period for which the order is in force as exceeds the debtor’s protected income under section 36.

Debt
Repayment
Order

(2) In accordance with section 36 the court shall not make a Debt Repayment Order the effect of which would be to reduce the income of bankrupt debtor below the debtor’s protected income.

(3) A Debt Repayment Order shall, in respect of any payment of income to which it is to apply, either-

- (a) require the bankrupt debtor to pay the Bankruptcy Trustee an amount equal to so much of that payment as is claimed by the Order; or

- (b) require the person making the payment to pay so much of it as is so claimed to the Bankruptcy Trustee, instead of the bankrupt debtor.

(4) Sums received by the Bankruptcy Trustee under a Debt Repayment Order, form part of the Bankruptcy Estate.

(5) A Debt Repayment Order must specify the period during which it is to have effect, and that period may not end after the discharge of the bankrupt debtor.

(6) Subject to the provisions of this section a Debt Repayment Order may be varied on the application of the Bankruptcy Trustee or the bankrupt debtor.

Debt
Repayment
Agreement

126. (1) In this section “Debt Repayment Agreement” means a written agreement between a bankrupt debtor and the Bankruptcy Trustee which provides—

- (a) that the bankrupt debtor is to pay to the Bankruptcy Trustee an amount equal to a specified part or proportion of the bankrupt debtor's income for a specified period; or
- (b) that, where a third party has been duly notified by the Bankruptcy Trustee and the bankrupt debtor, a third party is to pay to the Bankruptcy Trustee a specified proportion of money due to the bankrupt debtor by way of income for a specified period.

(2) A provision of Debt Repayment Agreement of a kind specified in paragraph (a) or (b) of subsection (1) may be enforced as if it were a provision of a Debt Repayment Order.

(3) Sums received by the Bankruptcy Trustee under a Debt Repayment Agreement form part of the Bankruptcy Estate.

(4) A Debt Repayment Agreement must specify the period during which it is to have effect and that period may not end after the discharge of the bankrupt debtor.

(5) In accordance with section 36 the terms of a Debt Repayment Arrangement shall not have the effect of reducing the income of the bankrupt debtor below protected income.

(6) A Debt Repayment Agreement may, subject to the provisions of this section be varied—

- (a) by written agreement between the parties; or
- (b) by the court on an application made by the bankrupt debtor or the Bankruptcy Trustee.

(7) The court—

- (a) may not vary a Debt Repayment Agreement so as to include provisions of a kind which would have the effect of reducing the income of a bankrupt debtor below what is necessary for meeting the reasonable domestic needs of the bankrupt debtor and the dependants; and
- (b) shall grant an application to vary a Debt Repayment Agreement if and to the extent that the court considers variation necessary to avoid the effect of reducing the income of a bankrupt debtor below what is necessary for meeting the reasonable domestic needs of the bankrupt debtor and the dependants.

127. The management in Bankruptcy of the estate of a person dying insolvent shall take place in accordance with the Sixth Schedule and as may be prescribed.

Insolvent
deceased
person's
estates

CHAPTER 8

EFFECT OF BANKRUPTCY ON CERTAIN TRANSACTIONS

Voidable preferences, voidable encumbrances, and alienations of property with intent to hinder, delay or defeat a creditor

128. (1) A transaction by a debtor may be set aside by the court as a voidable preference in accordance with sections 412, 415, 416 and 417.

(2) A transaction by a debtor may be set aside by the court as a voidable encumbrance in accordance with sections 413, 415, 416 and 417.

(3) A transaction by a debtor may be set aside by the court as an alienation of property with intent to hinder, delay or defeat a creditor in accordance with sections 414, 415, 416 and 417.

Transactions at an undervalue

129. The Bankruptcy Trustee may recover an excess from a recipient of value under a transaction at an undervalue in accordance with section 418.

Protection of good faith transactions without notice

130. (1) This section is subject to the provisions of this Act with respect to the effect of Bankruptcy on an execution or attachment under section 134, and with respect to the provisions on preferences and undervalued transactions under sections 412, 413, 414 and 418.

(2) A transaction between the bankrupt debtor and any other person under which, after commencement of the Bankruptcy, the bankrupt debtor acquires property, or property passes to the bankrupt debtor shall be valid against the Bankruptcy Trustee where –

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

(3) Where the other person is the bankrupt debtor's bank, a transaction dealing with the bankrupt debtor for value includes –

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

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

131. (1) This section applies where a person makes a payment of money or delivery of property to a person in respect of whom a Bankruptcy Order is subsequently made, or to a person claiming by assignment from such person.

Validity
of certain
payments
to bankrupt
debtor and
assignee

(2) The payment of money or delivery of property constitutes a good discharge to the person paying the money or delivering the property, where the payment or delivery is made before the actual date on which the Bankruptcy Order –

- (a) is made, without notice of the presentation of a bankruptcy petition or application; and
- (b) is made pursuant to the ordinary course of business or is otherwise made in good faith.

132. (1) The following applies where a person engaged in any business makes a general assignment to another of the person's existing or future book debts, or any class of them,

General
assignments of
book debts

and subsequently a Bankruptcy Order is made in respect of the person.

(2) The assignment of book debts by the bankrupt debtor is void against the Bankruptcy Trustee as regards any book debts which have not been paid at the commencement of the Bankruptcy, unless the assignment has been registered under the Registration of Documents Ordinance (Chapter 117) or the Companies Act.

(3) For the purposes of this section, “assignment” includes assignment by way of security and other charges on book debts.

(4) For the purposes of this section, a “general assignment” does not include –

- (a) any assignment of book debts due at the date of the assignment from specified debtors, or of growing debts due under specified contracts; or
- (b) any assignment of book debts included in a transfer of a business made in good faith and for value, or any assignment of assets for the benefit of creditors generally.

Validity
of certain
payments
to bankrupt
debtor and
assignee

133. (1) This section applies where a Bankruptcy Order has been made against a debtor who is or has been a party to a transaction for, or involving, the provision of credit.

(2) The court may, on the application of the Bankruptcy Trustee, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than two years before the commencement of the Bankruptcy.

(3) 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,

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following, as necessary—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was party to the transaction to pay to the Bankruptcy Trustee any sums paid to that person, by virtue of the transaction, by the bankrupt debtor;
- (d) provision requiring any person to surrender to the Bankruptcy Trustee any property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the Bankruptcy Trustee in accordance with an order under this section shall be comprised in the Bankruptcy Estate.

(6) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

No benefit
of execution
or other
process unless
completed
before
Bankruptcy

134. (1) Subject to subsection (2), a creditor is not entitled to the benefit of any execution or other legal process or distress against a bankrupt debtor or property of the bankrupt debtor unless the execution or other legal process or distress was completed at least one hundred and eighty days before the commencement of the Bankruptcy, except with the permission of the court on such terms and conditions as necessary.

(2) For the purposes of subsection (1) –

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with the execution, and a completed sale; and
- (b) an attachment of a debt is completed by the satisfaction of the debt.

(3) A person who acquires property of the bankrupt debtor in good faith –

- (a) from a Fiscal charged with an execution process;
or
- (b) on which distress has been levied,

acquires good title as against the Bankruptcy Trustee and the bankrupt debtor.

(4) Nothing in this section shall affect or limit the application of sections 412, 413, 414, 415, 416, 417, 418 or 419.

135. (1) This section applies to an execution process against property of a bankrupt debtor that was levied but not completed within the meaning of section 134 at least one hundred and eighty days before commencement of the Bankruptcy.

Duties of
fiscal in
Bankruptcy

(2) Notwithstanding any other enactment, subject to subsection (3) and unless the court orders otherwise on the application of the execution creditor, a Fiscal shall, as soon as practicable and after the Bankruptcy commences –

- (a) deliver to the Bankruptcy Trustee any property of the bankrupt debtor that is in or comes into the Fiscal's possession or custody or under the Fiscal's control as a result of the execution process; and
- (b) cause the Bankruptcy Trustee to be paid –
 - (i) any proceeds of realisation of property of the bankrupt debtor under the execution process;
 - (ii) any money of the bankrupt debtor received or seized under the execution process; and
 - (iii) any money paid to avoid seizure or sale of property of the bankrupt debtor under the execution process,

where such proceeds or money are in or come into the Fiscal's possession or custody or under the Fiscal's control, or are paid into court (and have not already been paid out).

(3) The Fiscal may retain or cause to be retained –

- (a) from property delivered under paragraph (a) of subsection (1), property of a value that the Fiscal may reasonably determine to represent the costs

of the execution process or attachment, as the case may be, incurred by the Fiscal; or

- (b) from proceeds or money paid under paragraph (b) of subsection (1), the costs of the execution process or attachment, as the case may be, incurred by the Fiscal.

CHAPTER 9

DISTRIBUTION OF PROPERTY

Distributions
in Bankruptcy

136. Whenever the Bankruptcy Trustee has sufficient funds in hands for the purpose of paying claims in accordance with sections 111 and the Fourth Schedule, subject to the retention of such sums as may be necessary for the expenses of the Bankruptcy, the Bankruptcy Trustee shall make a distribution in accordance with section 429.

CHAPTER 10

END OF BANKRUPTCY

Duration of
Bankruptcy

137. (1) The Bankruptcy continues in effect until an Order of Discharge has been made under section 138, which shall be made as soon as practicable after the expiry of a period of three years from the date of the Bankruptcy Order.

(2) The Bankruptcy may continue for a period longer than that specified in subsection (1). The total period shall not exceed seven years, where the debtor's included debts exceeds ten million rupees.

(3) A Bankruptcy can continue for a period longer than the periods specified in subsections (1) or (2) where the court suspends discharge under sections 141 or 143.

(4) When the court suspends a discharge under subsection (3), the court must specify an alternative date for discharge, which must be no later than one year after the expiry of –

- (a) where subsection (1) applies, the period of three years; or
- (b) where subsection (2) applies, the period of seven years,

from the date of the Bankruptcy Order.

138. (1) In a case in which the amount of the debtor's included debts does not exceed ten million rupees, the bankruptcy Trustee shall, on expiry of a period of three years from the date of the Bankruptcy Order, make an application to court for an order confirming the discharge of the bankrupt debtor.

Discharge

(2) If the Bankruptcy Trustee has not yet made an application under subsection (1) within a period of thirty days after the expiry of a period of three years from the date of the Bankruptcy Order, the bankrupt debtor may bring an application to court for an order confirming the discharge of the bankrupt debtor.

(3) On receiving an application under subsection (1) or (2), the court shall, within ninety days, make an order of discharge, unless an application to contest discharge has been made under section 140 below.

(4) The court order made under subsection (3) shall provide that the bankrupt debtor is discharged from the Bankruptcy Order on the expiry of a period of three years from the date of the Bankruptcy Order.

(5) On discharge from the Bankruptcy Order, the bankrupt debtor's included debts shall be cancelled, and the bankrupt debtor is not liable to pay any part of the debts, including any

penalties, interest, and other sums which may have become payable in relation to those debts.

(6) The discharge of debts under this section shall not release the bankrupt debtor from any debt or liability specified as an excluded debt under section 37.

(7) A discharge under this section shall not release any person from any liability who, at the date of the discharge, was —

- (a) a business partner of the discharged debtor;
- (b) a co-trustee with the discharged debtor;
- (c) jointly bound or contracted with the discharged debtor; or
- (d) a guarantor or in the nature of a guarantor of the discharged debtor.

Discharge :
High Value
Bankruptcy

139. (1) In a case in which the amount of the debtor's included debts exceeds ten million rupees, the Bankruptcy Trustee shall, on expiry of a period of seven years from the date of the Bankruptcy Order, make an application to court for an order confirming the discharge of the bankrupt debtor.

(2) If the Bankruptcy Trustee has not yet made an application under subsection (1) within a period of thirty days after the expiry of a period of seven years from the date of the Bankruptcy Order, the bankrupt debtor may bring an application to court for an order confirming the discharge of the bankrupt debtor.

(3) On receiving an application under subsection (1) or (2), the court shall, within ninety days, make an order of discharge, unless an application to contest the discharge has been made under section 140.

(4) The court order made under subsection (3) shall provide that the bankrupt debtor is discharged from the Bankruptcy Order on the expiry of a period of seven years from the date of the Bankruptcy Order.

(5) On discharge from the Bankruptcy Order, the bankrupt debtor's included debts shall be cancelled, and the bankrupt debtor is not liable to pay any part of the debts, including any penalties, interest and other sums which may have become payable in relation to those debts.

(6) The discharge of debts under this section shall not release the bankrupt debtor from any debt or liability specified as an excluded debt under section 37.

(7) A discharge under this section shall not release from any liability any person who, at the date of the discharge, was -

- (a) a business partner of the discharged debtor;
- (b) a co-trustee with the discharged debtor;
- (c) jointly bound or contracted with the discharged debtor; or
- (d) a guarantor or in the nature of a guarantor of the discharged debtor.

140. (1) The trustee or a creditor may apply to the court to contest the bankrupt debtor's discharge. Application to contest discharge

(2) An application to the court to contest the bankrupt debtor's discharge shall be made at least hundred and eighty days before the date at which discharge would otherwise occur but for this application.

(3) The applicant must provide written notice to the bankrupt debtor of an application to contest the discharge, including the grounds on which the application is based.

(4) Where the applicant is the Bankruptcy Trustee, the applicant must provide the creditors with written notice of the application.

(5) Where the applicant is a creditor, the applicant must provide the Bankruptcy Trustee with written notice of the application.

(6) An application to the court to contest the discharge shall be based on the grounds of a failure by the bankrupt debtor to comply with the obligations owing as specified in sections 32, 112, 113 and 114.

(7) On receiving an application to oppose the bankrupt debtor's discharge, the court shall fix a date for hearing of the said application, within forty five days after the receipt of the application.

(8) The court shall provide written notice to the bankrupt debtor and creditors of the hearing of the application to contest discharge.

Interim
suspension of
discharge

141. (1) On receiving an application to contest the bankrupt debtor's discharge, the court, if satisfied that there are reasonable grounds for concluding that an order suspending the discharge would be made after a substantive hearing, may make an interim order provisionally suspending the bankrupt debtor's discharge until a hearing may take place.

(2) When making an interim order under subsection (1), the court may order the Bankrupt Trustee to investigate the extent to which the bankrupt debtor has complied with the personal insolvency duties specified in sections 32, 112, 113 and 114.

(3) Where an application to contest the bankrupt debtor's discharge has been presented by a trustee or creditor outside of the time period specified under subsection (2) of section 140, a court may permit a late application to be submitted where the court is satisfied that –

- (a) the delay in submitting the application has been caused by exceptional circumstances beyond the control of the applicant; or
- (b) facts have been established that were not known to the applicant during the time period specified in subsection (2) of section 140.

(4) Where the court is convinced that further investigation of the bankrupt debtor's affairs by the Bankruptcy Trustee is required prior to a hearing of the application to contest discharge, the court may issue a further interim order —

- (a) provisionally suspending the bankrupt debtor's discharge; and
- (b) postponing the hearing for a period reasonably necessary for such investigation to take place.

(5) When determining whether to make an interim order under subsections (1) and (4), or to permit a late application under subsection (3), the court shall have due regard to any unfairness to the bankrupt debtor which might result from the extension of the Bankruptcy period.

142. (1) The Bankruptcy Trustee must prepare a Bankruptcy report and file it in the court when an application to contest discharge has been made under section 140.

Application
to Contest
Discharge:
Bankruptcy
report

(2) The Bankruptcy Trustee shall report on-

- (a) the affairs of the bankrupt debtor;
- (b) the manner in which the bankrupt debtor has performed the obligations imposed on debtors under this Act or obeyed orders of the court;
- (c) the Trustee's view as to whether a ground exists for denial of discharge; and

- (d) any other matter relating to the Bankruptcy which the Trustee has reason to consider may assist the court in making a decision as to the bankrupt debtor's discharge.

(3) The Bankruptcy Trustees shall provide the debtor and the creditors with written notice of the Bankruptcy report at least twenty one days in advance of the hearing of the application to contest discharge.

(4) If a creditor contests discharge on grounds other than those specified in the Bankruptcy report, the creditor shall give written notice to the Bankruptcy Trustee and the bankrupt debtor, not less than ten days in advance of the hearing of the application to contest the grounds of such discharge.

Court
Determination
of Application
to contest a
discharge

143. (1) On the hearing of an application to contest a discharge, the court may, having regard to the circumstances of the case —

- (a) immediately and unconditionally discharge the bankrupt debtor; or
- (b) discharge the bankrupt debtor but suspend the order for a fixed period.

(2) Where the court suspends a discharge order, the effect of the order shall be that the bankrupt debtor be discharged no later than one year after the expiry of —

- (a) where subsection (1) of section 137 and section 138 apply, the period of three years; or
- (b) where subsection (2) of section 137 and section 139 applies, the period of seven years,

from the date of the Bankruptcy Order.

144. (1) The court may, on the application of the Bankruptcy Trustee or a creditor, and after notice to the bankrupt debtor and a hearing, revoke a discharge granted under sections 138 or 139.

Revocation of
Bankruptcy
Discharge

(2) An application to revoke a discharge under this section may only be made at a time before one year after the discharge.

(3) The court may only revoke a discharge under this section if the court is satisfied that-

- (a) the discharge was obtained through the fraud of the bankrupt debtor; and the applicant did not know of such fraud until after such discharge; or
- (b) the bankrupt debtor failed, with fraudulent intent, to report income and property to the Bankruptcy Trustee, where such income and property were not exempt from distribution to creditors under the rules of sections 34, 35 and 36.

(4) The revocation of a discharge under this section does not prejudice or affect the rights or remedies that any person other than the bankrupt debtor would have had if the discharge had not been revoked.

(5) Property that has been acquired by the bankrupt debtor after discharge and that is vested in the bankrupt debtor on the date of the revocation-

- (a) vests in the Bankruptcy Trustee subject to any encumbrances; and
- (b) must be applied by the Bankruptcy Trustee to pay debts that the bankrupt debtor has incurred since the date of discharge.

Annulment of
Bankruptcy
Order

145. (1) The court may annul a Bankruptcy Order if at any time, it appears to the court -

- (a) that, on any grounds existing at the time the order was made, the order ought not to have been made; or
- (b) that the provable debts and the expenses of the Bankruptcy have all, since the making of the Bankruptcy Order, either been paid or secured to the satisfaction of the court.

(2) The court may annul a Bankruptcy Order whether or not the bankrupt debtor has been discharged from the Bankruptcy.

(3) Where the court annuls a Bankruptcy Order —

- (a) any sale or other disposition of property, payments made or other things duly done, under any provision in this Part, by or under the authority of the Official Receiver, Bankruptcy Trustee, or the court, shall be valid; but
- (b) if any of the Bankruptcy Estate is then vested, under any such provision, then a Bankruptcy Trustee, shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the bankrupt debtor on such terms, if any as the court may direct.

Application
for Debt
Restructuring
Arrangement
during
Bankruptcy

146. (1) A bankrupt debtor may apply to court for an order staying the administration of the Bankruptcy for a limited period of ninety days, for the purpose of preparing a proposal for a Debt Restructuring Arrangement under Part IV.

(2) Where a court has made an order under subsection (1), the debtor must prepare a proposal for a Debt Restructuring Arrangement under the procedure specified in Part IV.

(3) Where a proposal for a Debt Restructuring Arrangement in respect of a bankrupt debtor has been approved by creditors under section 52 and confirmed by the court under section 54 —

- (a) the Debt Restructuring Arrangement shall take effect in accordance with its terms and the provisions of Part IV; and
- (b) the court order providing for the confirmation of the Debt Restructuring Arrangement shall also provide for the annulment of the Bankruptcy Order in accordance with section 145.

(4) Where a court has annulled a Bankruptcy Order under subsection (3), the annulment shall have the effects specified in subsection (3) of section 145.

CHAPTER 11

THE OFFICIAL RECEIVER

147. (1) The Official Receiver shall investigate the conduct of the bankrupt debtor and report to the court, stating whether there is reason to believe that the bankrupt debtor has committed any act —

Powers of
Official
Receiver
as regards
the debtor's
conduct in
Bankruptcy

- (a) which constitutes an offence under this Act or any enactment repealed by this Act; or
- (b) which would justify the court in refusing or suspending the bankrupt debtor's discharge.

(2) Subsection (1) shall not apply to a case in which the Official Receiver considers that an investigation under that subsection is unnecessary.

(3) The Official Receiver shall make such other reports concerning the conduct of the bankrupt debtor as the court may direct.

(4) A report by the Official Receiver under this section shall in any proceedings be *prima facie* evidence of the facts stated in it.

(5) The Official Receiver shall act in accordance with the provisions of section 96 regarding the Official Receiver's power to apply to court for a public examination of the bankrupt debtor.

(6) The Official Receiver shall take such part as the Official Receiver deems necessary in the public examination of the bankrupt debtor under section 96.

(7) The Official Receiver shall give such assistance as the Attorney - General may direct in relation to the prosecution of any offence under this Act.

General Duties
of the Official
Receiver
as to the
Bankruptcy

148. (1) The Official Receiver shall act as Bankruptcy Trustee in the circumstances specified in section 97.

(2) The Official Receiver shall act as Interim Receiver in the circumstances as specified in section 91.

(3) The Official Receiver shall advertise, and provide notice of, all such matters as it may be necessary to advertise, or provide notice of, under this Act.

CHAPTER 12

PARTNERSHIPS IN BANKRUPTCY

Bankruptcy
Applications
and
Bankruptcy
petitions
in cases of
Partnerships

149. (1) Any creditor whose debt is sufficient to entitle the creditor to present a Bankruptcy petition against all the partners of a firm may present a Bankruptcy petition under section 85 against any one or more partners of the firm without including the others.

(2) Where all debtors are eligible for a Bankruptcy Order under sections 81 and 82, two or more debtors who are

partners in a business partnership may file a joint Bankruptcy application under section 81.

(3) When a Bankruptcy Order is made under section 84 in respect of a joint Bankruptcy application, the Order applies both separately and jointly to the debtors.

150. Where there are more respondents than one to a Bankruptcy petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other respondents.

Court to
dismiss
petition

151. (1) Where a Bankruptcy Order has been made under section 90 in relation to a Bankruptcy petition against one member of a partnership —

Property of
partners to be
vested in same
Trustee

- (a) any other Bankruptcy petition or application against or by a member of the same partnership shall be filed with the first-mentioned petition;
- (b) unless the court directs otherwise, the same Bankruptcy Trustee shall be appointed as may have been appointed in respect of the Bankruptcy Estate of the first-mentioned member of the partnership; and
- (c) the court may give such directions for consolidating the proceedings as it sees fit.

(2) Where a Bankruptcy Order has been made under section 84 in relation to a bankruptcy application made by one member of a partnership —

- (a) any other Bankruptcy petition or application against or by a member of the same partnership shall be filed with the first-mentioned application;
- (b) unless the court directs otherwise, the same Bankruptcy Trustee shall be appointed as may

have been appointed in respect of the Bankruptcy Estate of the first-mentioned member of the partnership; and

- (c) the court may give such directions for consolidating the proceedings as it sees fit.

Actions by
Bankruptcy
Trustee and
bankrupt
debtor's
partners

152. (1) Where a Bankruptcy Order has been made in respect of a member of a partnership, the court may authorise the Bankruptcy Trustee to commence and prosecute any action in the names of the Bankruptcy Trustee and of the bankrupt debtor's partner.

(2) Where the court has authorised the Bankruptcy Trustee to commence and prosecute an action under subsection (1), any release by such bankrupt debtor's partner of the debt or demand to which the action relates shall be void.

(3) Where a Bankruptcy Trustee makes an application to court for authority to commence and prosecute an action under subsection (1), the Bankruptcy Trustee shall provide written notice of such application to the bankrupt debtor's partner.

(4) Where a Bankruptcy Trustee makes an application to court for authority to commence and prosecute an action under subsection (1), the bankrupt debtor's partner may contest the application on showing good cause.

(5) Where a bankrupt debtor's partner contests the application under subsection (4) —

- (a) the court may, as necessary, direct that such partner receive the proper share of the proceeds of the action; and
- (b) if such partner does not claim any benefit therefrom, such partner shall be indemnified against costs in respect thereof as the court directs.

153. Where a bankrupt debtor is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt debtor.

Actions on
joint contract

154. (1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may institute proceedings or defend proceedings under this Act in the name of the partnership.

Proceedings
in partnership
name

(2) In the circumstances applicable in subsection (1) the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such partner to be disclosed in such manner and verified on oath or otherwise, as the court may direct.

PART VII

Personal Insolvency Register

155. (1) The Authority shall establish and maintain a Personal Insolvency Register.

Authority
to Maintain
Personal
Insolvency
Register

(2) The Personal Insolvency Register shall be in electronic form and in such other form, if any, as the Authority decides.

156. (1) The Personal Insolvency Register shall be for the purpose of maintaining records and information of the debtors in respect of whom a Personal Insolvency Order is in effect.

Purpose of
Personal
Insolvency
Register

(2) The Personal Insolvency Register shall be for the further purposes of —

- (a) facilitating the compliance, audit, and other supporting and administrative functions of the Official Receiver, Authority, courts, personal insolvency officials, or any other person under this Act;

- (b) facilitating the enforcement functions and the exercise of the powers of the Official Receiver, Authority, the courts, personal insolvency officials, or any other person under this Act; and
- (c) providing statistical information and information for research purposes in relation to Personal Insolvency Procedures.

Information to
be recorded in
the Personal
Insolvency
Register

157. (1) The Personal Insolvency Register shall contain the following information in respect of a debtor who is subject to a personal insolvency procedure, as well as any other information as may be prescribed:—

- (a) the debtor's full name;
- (b) any other name (including any alias or trading name) used by the debtor and known to the Official Receiver or the Authority;
- (c) the debtor's address;
- (d) the fact of the existence of a Personal Insolvency Order in respect of the debtor;
- (e) the type of Personal Insolvency Order made in respect of the debtor;
- (f) the date on which a Personal Insolvency Order was made in respect of the debtor;
- (g) the scheduled date for discharge of the Personal Insolvency Order;
- (h) the court which made a Personal Insolvency Order in respect of the debtor;
- (i) the case number, if any, associated with the Personal Insolvency Order;

- (j) the name, address, and contact details of any authorised intermediary, personal insolvency proposer, personal insolvency administrator, and Bankruptcy Trustee, as the case may be, who is acting in the debtor's case;
- (k) the address and contact details of the office of the Official Receiver dealing with the debtor's case and;
- (l) any other information required to be entered in the Personal Insolvency Register under this Act or regulations made thereunder.

158. (1) On the discharge of the debtor from a personal insolvency procedure, the Authority shall remove all information relating to the debtor from the Personal Insolvency Register.

Removal of
information
from Personal
Insolvency
Register

(2) On the removal of information relating to the debtor from the Personal Insolvency Register, the Authority shall retain all relevant records relating to the debtor's case on file for a period of six years.

(3) On the revocation of discharge under sections 79 or 144 the Authority shall-

- (a) republish in the Personal Insolvency Register the information relating to a debtor's case as specified in section 157; and
- (b) record in the Personal Insolvency Register the making of a revocation order, and the date on which such revocation order was made.

(4) Where a Personal Insolvency Order has been made in respect of a debtor on two or more occasions, the Authority shall —

- (a) maintain information relating to the debtor on the Personal Insolvency Register for a period of two years after the debtor's discharge from a second or subsequent Personal Insolvency Procedure, or such period as may be prescribed; and
- (b) ensure that the Personal Insolvency Register contains all of the information required by this Act in respect of the debtor and each insolvency event.

Access to
Personal
Insolvency
Register

159. (1) A person may only search the Personal Insolvency Register in accordance with this Act, such procedures as may be prescribed or rules made by the Authority.

(2) Members of the public may inspect the Personal Insolvency Register at all reasonable times.

(3) The Authority may charge a fee to members of the public for inspection of the Personal Insolvency Register.

(4) The Personal Insolvency Register may be searched by any person, or by any party acting with the consent of that person, for the purpose of searching for information about that person.

(5) The Personal Insolvency Register may be searched by any person —

- (a) for the purpose of ascertaining whether a Personal Insolvency Order is in effect in respect of another person, where such ascertainment is necessary in the course of a person's business for evaluating or ascertaining the credit worthiness or credit standing of another person or in connection with the investigation of title to property of any nature;
- (b) for the purpose of ascertaining whether a Personal Insolvency Order has been made in respect of a debtor on two or more occasions;

- (c) for any purpose related to the debtor's participation in a Personal Insolvency Procedure;
 - (d) for the purpose of facilitating the compliance, audit, and other supporting and administrative functions of the Official Receiver, Authority, courts, personal insolvency officials, or any other person under this Act;
 - (e) for the purpose of facilitating the enforcement functions and the exercise of the powers of the Official Receiver, Authority, courts, or any other person under this Act;
 - (f) for the purpose of providing statistical information and information for research purposes in relation to Personal Insolvency Procedures.
- (6) The Personal Insolvency Register may be searched only by reference to the following criteria:-
- (a) the name of the debtor;
 - (b) the case number, if any, associated with the Personal Insolvency Order;
 - (c) the name of a court;
 - (d) the date of the Personal Insolvency Order;
 - (e) any combination of the criteria in paragraphs (a) to (d); or
 - (f) any other criteria as may be prescribed.

160. (1) No suit or prosecution shall be instituted against the Official Receiver, for any acts done or purported to be done or omitted to be done, or decisions made or purported to be made, in good faith in relation to the maintenance of a public register under this Part.

Authority
and Official
Receiver not
liable for act
or all omission

(2) No suit or prosecution shall be instituted against the Authority, for any acts done or purported to be done or omitted to be done, or decisions made or purported to be made, in good faith in relation to the maintenance of a public register under this Part.

Personal
Insolvency
Register
and Credit
Information
Bureau

161. (1) Subject to the provisions of the Credit Information Bureau Act, No.18 of 1990 and any other written law, information relating to a debtor in the Personal Insolvency Register may be entered in the records of the Credit Information Bureau.

(2) The form and manner in which the information in the Personal Insolvency Register may be entered in the records of the Credit Information Bureau shall be prescribed.

(3) On the removal of all information relating to the debtor from the Register on the discharge of the debtor from a personal insolvency procedure under section 158, any information relating to the debtor's personal insolvency entered in the records of the Credit Information Bureau shall be removed from the Bureau –

- (a) within a period of six months after the date of the discharge of the debtor; or
- (b) such other period as may be prescribed.

PART VIII

Personal Insolvency Offences

CHAPTER 1

GENERAL PROVISIONS RELATING TO OFFENCES

Intent

162. A person is not guilty of an offence under this Part unless it is proven that, at the time of the conduct constituting the offence, the person had intent —

- (a) to defraud;
- (b) to deceive;
- (c) to conceal the state of any such conduct; or
- (d) to defeat the law.

163. A person who commits an offence under this Part shall be liable on conviction to rigorous imprisonment for a term not exceeding seven years or to a fine not exceeding ten million rupees or to both such fine and imprisonment.

Penalties
for Offences
under this Part

164. (1) Without prejudice to any liability in respect of a subsequent personal insolvency, a debtor has not committed an offence under this Part in respect of anything done after the debtor discharge from a personal insolvency procedure.

Criminal
Liability after
Discharge

(2) Notwithstanding the provisions of subsection (1), nothing in this Part shall prevent the institution of proceedings against a discharged debtor for an offence committed before such discharge from a personal insolvency procedure.

(3) Chapter 3 of this part shall apply whether or not the Bankruptcy Order is annulled, but proceedings in respect of an offence under Chapter 2 shall not be instituted after such annulment.

CHAPTER 2

PERSONAL INSOLVENCY OFFENCES

165. (1) A person on whose behalf an application or proposal to which this section applies commits an offence, if the person —

- (a) knowingly or recklessly provides information which is false or misleading in a material respect; or

Personal
Insolvency
Procedure
Applications:
False
Information

- (b) knowingly or recklessly makes a material omission in any statement made under this Act in relation to the person's financial affairs.

(2) This section applies to an application or proposal—

- (a) under section 50 for a Debt Protection Moratorium Order;
- (b) under section 44 for a Debt Restructuring Arrangement;
- (c) under section 67 for a Debt Rehabilitation Order;
or
- (d) under section 81 for a Bankruptcy Order.

Personal
Insolvency
Procedures:
Non-
Compliance
with
responsibilities
of debtors

166. (1) A person who is party, as a debtor, to a Debt Protection Moratorium Order shall commit an offence if the debtor –

- (a) intentionally fails to comply with an obligation under sections 32 and 42; or
- (b) provides information to the court or the Official Receiver in connection with such an obligation, knowing the information to be false or misleading in a material respect.

(2) A person who is a party, as a debtor, to a Debt Restructuring Arrangement under Part IV shall commit an offence if the debtor-

- (a) intentionally fails to comply with an obligation under sections 32 and 56; or
- (b) provides information to the court, personal insolvency proposer, personal insolvency administrator or the Official Receiver in

connection with such an obligation, knowing the information to be false or misleading in a material respect.

(3) A person who is party, as a debtor, to a Debt Rehabilitation Order under Part V shall commit an offence if the debtor-

- (a) intentionally fails to comply with an obligation under sections 32 and 71; or
- (b) provides information to the court or the Official Receiver in connection with such an obligation, knowing the information to be false or misleading in a material respect.

167. (1) A person to whom this section applies shall commit an offence where such person commits an act referred to in subsection (2) for the purpose of —

Personal
Insolvency
Procedures:
Documents
and Records

- (a) obtaining a Debt Protection Moratorium Order;
- (b) avoiding an obligation under sections 32 and 42;
- (c) obtaining an order confirming the coming into effect of a Debt Restructuring Arrangement under section 54;
- (d) avoiding an obligation under sections 32 and 56;
- (e) avoiding the termination of a Debt Restructuring Arrangement;
- (f) obtaining a Debt Rehabilitation Order;
- (g) avoiding an obligation under sections 32 and 71;
- (h) avoiding the termination or conversion of a Debt Rehabilitation Order; or

(i) avoiding any other obligation under this Act.

(2) A person commits an offence who —

- (a) fails to provide, at the request of the court or Official Receiver, all of the financial records of which such person has possession or control;
- (b) prevents the production to the court or to the Official Receiver of a financial record;
- (c) fraudulently parts with, alters or makes any omission in, or has been concerned in or abetted the fraudulent parting with, destroying, altering or making any omission in, any financial record.

(3) This section applies to a person-

- (a) who has made an application or proposal under sections 38, 50 or 67;
- (b) in respect of whom a Debt Protection Moratorium Order, Debt Rehabilitation Order, or order confirming a Debt Restructuring Arrangement has been made.

(4) In this section “financial record”, in relation to a person to whom this section applies, means a book, document or record relating to that person’s financial affairs.

Personal
Insolvency
Procedures :
Disposal of
Property

168. (1) A debtor to whom this section applies commits an offence where the debtor does an act referred to in subsection (2) for the purpose of—

- (a) obtaining a Debt Protection Moratorium Order;
- (b) avoiding an obligation under sections 32 and 42;
- (c) obtaining a Debt Restructuring Arrangement;

- (d) avoiding an obligation under sections 32 and 56;
- (e) avoiding the termination of a Debt Restructuring Arrangement;
- (f) obtaining a Debt Rehabilitation Order;
- (g) avoiding an obligation under sections 32 and 71;
- (h) avoiding the termination or conversion of a Debt Rehabilitation Order; or
- (i) avoiding any other obligation under this Act.

(2) Subject to subsection (3), a debtor commits an act referred to in this subsection where the debtor, other than in the normal course of business carried on by the debtor or in the normal family affairs of the debtor—

- (a) makes or causes to be made a gift of any of the debtor's property to another person;
- (b) otherwise makes or causes to be made any transfer of any of the debtor's property, on terms that provide for the debtor to receive no consideration, from another person; or
- (c) enters into a transaction with another person involving the transfer of any of the debtor's property to that other person or to a third person, whether or not the third person is a party to the transaction, where the value of the property concerned, in money or money's worth, is significantly greater than the value, in money or money's worth, of the consideration provided by the other person.

(3) Subsection (2) does not apply to property of a value of less than Fifty Thousand Rupees or such other sum as may be prescribed.

(4) This section applies to a debtor —

- (a) who has made an application or proposal under sections 38, 50 or 67;
- (b) in respect of whom a Debt Protection Moratorium Order, Debt Rehabilitation Order, or order confirming the coming into effect of a Debt Restructuring Arrangement, has been made.

Personal
Insolvency
Procedures:
Credit and
Business

169. (1) A debtor commits of an offence if such debtor, either alone or with any other person, obtains credit in an amount of more than one hundred thousand rupees or such sum as may be prescribed, without informing the person from whom the credit is obtained of —

- (a) the debtor's name, as specified in the Debt Protection Moratorium Order, Debt Restructuring Arrangement, or Debt Rehabilitation Order concerned; and
- (b) the fact that the debtor is subject to a Debt Protection Moratorium Order, Debt Restructuring Arrangement, or Debt Rehabilitation Order.

(2) In this section, “debtor” means a debtor in respect of whom—

- (a) a Debt Protection Moratorium Order has been made, for so long as the Debt Protection Moratorium Order remains in effect;
- (b) an order has been made confirming the coming into effect of a Debt Restructuring Arrangement; for so long as the Debt Restructuring Arrangement remains in effect; or
- (c) Debt Rehabilitation Order has been made, for so long as the Debt Rehabilitation Order remains in effect.

(3) The reference in subsection (1) to a debtor obtaining credit includes the following cases—

- (a) where goods are hired to the debtor under a hire-purchase agreement or agreed to be sold to the debtor under a conditional sale agreement; and
- (b) where the debtor is paid in advance in money or otherwise for the supply of goods or services.

CHAPTER 3

BANKRUPTCY OFFENCES

170. (1) The bankrupt debtor commits an offence, if-

Bankruptcy
offences:
Non-disclosure
and False
Representations

- (a) the bankrupt debtor does not, to the best of his knowledge and belief, disclose all the property comprised in the Bankruptcy Estate to the Official Receiver or the Bankruptcy Trustee; or
- (b) the bankrupt debtor does not inform the Official Receiver or the Bankruptcy Trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (b) of subsection (1) shall not apply to any disposal in the normal course of business carried on by the bankrupt debtor or to any payment of the ordinary expenses of the bankrupt debtor or the debtor's family.

(3) The bankrupt debtor commits an offence if the said debtor makes a false representation for, or defrauds for, the purpose of obtaining the consent of creditors to any agreement with reference to the bankrupt debtor's property or financial affairs.

Bankruptcy
offences:
Property

171. (1) The bankrupt debtor commits an offence, if-

- (a) the bankrupt debtor does not deliver up possession to the Official Receiver or Bankruptcy Trustee, or as the Official Receiver or Trustee may direct, of such part of the property as is in such debtor's possession or control and possession of which such debtor is required by law so to deliver up; or
- (b) the bankrupt debtor conceals any debt due to or from such debtor or conceals any property the value of which is not less than one hundred thousand rupees, or such sum as may be prescribed, and possession of which the bankrupt debtor is required to deliver up to the Official Receiver or Bankruptcy Trustee.

(2) The bankrupt debtor commits an offence if such debtor disposes of any property, other than in the normal course of business carried on by the bankrupt debtor or in the normal family affairs of the bankrupt debtor, the value of which was not less than one hundred thousand rupees or such sum as may be prescribed, and possession of which the bankrupt debtor has or would have been required to deliver up to the Official Receiver or the Bankruptcy Trustee.

(3) The bankrupt debtor commits an offence if —

- (a) with the intent to hinder, delay or defeat creditors; and
- (b) bankrupt debtor, makes or causes to be made any gift or transfer of or any charge on, the bankrupt debtor's property, other than in the normal course of business carried on by the bankrupt debtor or in the normal family affairs.

Bankruptcy
offences:
Documents

172. (1) The bankrupt debtor commits an offence if the bankrupt debtor does not deliver up possession to the Official Receiver or the Bankruptcy Trustee, as the Official Receiver

or Bankruptcy Trustee may direct, or any financial record of which the bankrupt debtor has possession or control.

(2) The bankrupt debtor commits an offence if such debtor—

- (a) prevents the production of any financial record;
- (b) has fraudulently parted with, altered or made any omission in, or been concerned in or abetted the fraudulent parting with, destroying, altering or making any omission in any financial record; or
- (c) attempts to account for any part of ones property by fictitious losses or expenses.

(3) The bankrupt debtor commits an offence if the bankrupt debtor disposes of, alters or makes any material omission in, or causes or permits the disposal, altering or making of any material omission in, any financial record.

(4) In this section “financial record”, in relation to a person to whom this section applies, means a book, document or record relating directly to –

- (a) provable debts or property forming part of the Bankruptcy Estate; and
- (b) either the period since the commencement of the Bankruptcy, or the period of twelve months ending with the commencement of the Bankruptcy.

173. (1) The bankrupt debtor commits an offence, if—

- (a) either alone or jointly with any other person, the bankrupt debtor obtains credit to the extent of fifty thousand rupees or such higher value as may be prescribed, without the creditor being informed prior that a Bankruptcy Order is in effect in respect of the bankrupt debtor; or

Bankruptcy
offences:
Credit and
Borrowing

- (b) the bankrupt debtor engages, directly or indirectly, in any business under a name other than that specified in the Bankruptcy Order without disclosing prior to all persons with whom such debtor enters into any business transaction in the name specified in the Bankruptcy Order.

(2) The bankrupt debtor commits an offence if, after the commencement of Bankruptcy-

- (a) the bankrupt debtor obtains property on credit and has not paid for the property; and
- (b) the bankrupt debtor obtains the property on credit-
 - (i) by a false representation or other fraud;
 - (ii) by a false statement of financial position or other false statement of the bankrupt debtor's affairs; or
 - (iii) under the false pretence of carrying on business and dealing with it in the normal course of business.

(3) The reference to the bankrupt debtor obtaining credit includes the following cases-

- (a) where goods are hired to the bankrupt debtor under a hire-purchase agreement, or agreed to be sold to the bankrupt debtor under a conditional sale agreement; and
- (b) where the bankrupt debtor has been paid in advance (whether in money or otherwise) for the supply of goods or services.

under the Bankruptcy, and such person fails for a period of one month to inform the Bankruptcy Trustee.

175. (1) The bankrupt debtor commits an offence if the bankrupt debtor leaves Sri Lanka -

Bankruptcy
offences:
Leaving
Sri Lanka

- (a) while having the intent specified in section 162, and
- (b) other than in the normal course of business carried on by the bankrupt debtor or in the normal family affairs of the bankrupt debtor,

or attempts or prepares to leave, Sri Lanka with any property the value of which is not less than fifty thousand rupees or such sum as may be prescribed, and possession of which is required to deliver up to the Official Receiver or the Bankruptcy Trustee.

176. (1) A bankrupt debtor commits an offence if the bankrupt debtor—

Bankruptcy
offences:
Non-
Compliance
with
Responsibilities
of Debtors

- (a) intentionally and without reasonable excuse fails to comply with an obligation under sections 32, 112, 113 and 114;
- (b) provides information to the court, Bankruptcy Trustee or the Official Receiver in connection with an obligation under sections 32, 112, 113 and 114 knowing the information to be false or misleading in a material respect; or
- (c) intentionally and without reasonable excuse refuses to answer fully and truthfully all proper questions put to the bankrupt debtor at any examination held under this Act.

177. A bankrupt debtor commits an offence if the bankrupt debtor, with intent to conceal the true state of ones financial affairs, has within the period of twelve months prior to the making of a bankruptcy application or presentation of a

Bankruptcy
offences:
Failure to keep
Proper records
with intent to
conceal

bankruptcy petition, has failed to keep and preserve a proper record of the bankrupt debtor's transactions.

PART IX

Rescue of Companies : Administration

CHAPTER 1

ROLE OF ADMINISTRATOR

Role of
Administrator

178. The administrator of a company in administration –

- (a) has the control of the company's affairs, business and property;
- (b) may administer the company's affairs, business and property;
- (c) is required to investigate the company's affairs;
- (d) has the following objectives : –
 - (i) to administer the company's affairs, business and property in a way that maximises the chances of the company, or as much as possible of its business, continuing in existence; and
 - (ii) if it is not possible for the company or its business to continue in existence, to administer the company's affairs, business and property in a way that results in a better return for the creditors and shareholders than would result from an immediate liquidation of the company;
- (e) may, subject to the applicable provisions of this Act, terminate or dispose of all or part of the

company's business, and dispose of all or part of the company's property; and

- (f) may perform or exercise any function or power that the company or any of its directors or other officers could perform or exercise if the company were not in administration.

CHAPTER 2

PROCESS OF ADMINISTRATION

179. The administration of a company commences on the day on which, and at the time at which, an administrator other than a replacement administrator is appointed under this Part.

When
administration
commences

180. (1) Following the commencement of an administration, and subject to subsection (4) and to the other applicable provisions of this Act and any regulation made thereunder the administrator shall—

Administration
routes

- (a) convene —
 - (i) an initial meeting; and
 - (ii) subsequently, an outcome meeting; or
- (b) in relation to a proposed deed of company arrangement —
 - (i) convene a combined initial and outcome meeting;
 - (ii) apply to the court for a deed review hearing; and
 - (iii) after hearing such views of creditors as are expressed on this matter at the combined initial and outcome meeting —

(a) proceed to the deed review hearing; or

(b) convene an outcome meeting.

(2) In this section –

“standard route” means the course of action described in paragraph (a) of subsection (1);

“expedited route” means the course of action described in paragraph (b) of subsection (1); and

(3) In the standard route –

(a) the objectives of an initial meeting include the provision of an opportunity for creditors to decide, subject to the applicable provisions of this Act –

(i) whether or not to replace the administrator; and

(ii) whether or not an administration creditors’ committee shall be appointed and, if appointed, who shall be the members of that committee,

(b) the objectives of an outcome meeting include the making of a resolution by creditors, subject to the applicable provisions of this Act, on whether –

(i) a proposed deed of company arrangement should be approved;

(ii) unless the company is already in liquidation, a liquidator should be appointed; or

(iii) the administration should end otherwise.

(4) In the expedited route –

(a) the objectives of a combined initial and outcome meeting include –

(i) the objectives of an initial meeting referred to in paragraph (a) of subsection (3); and

(ii) the making of a resolution by creditors, subject to the applicable provisions of this Act, on whether or not a proposed deed of company arrangement should be approved; and

(b) the objective of a deed review hearing is a determination by the court, subject to the applicable provisions of this Act, on whether or not a deed of company arrangement approved by creditors should be made binding.

(5) Forthwith after commencement of the administration and subject to subsection (6), the administrator shall –

(a) decide on whether to pursue the standard route; or

(b) decide on whether to pursue the expedited route.

(6) The administrator may not decide to pursue the expedited route unless –

(a) a directors' statement has been provided to the administrator under section 219; and

(b) the administrator is satisfied that –

(i) there is sufficient support from creditors for approval of a proposed deed of company arrangement at the combined initial and outcome meeting; and

- (ii) if the proposed deed of company arrangement referred to in paragraph (i) were to take effect, it would comply with the requirements in section 223.

(7) In this Part –

“combined initial and outcome meeting” means, a meeting of creditors, as described in section 215;

“convening period” means, the period of twenty working days after commencement of the administration, and includes any period by which it is extended under subsection (3) or (4) of section 213;

“deed review hearing” means, a court hearing as described in section 216;

“initial meeting” means, a meeting of creditors, as described in section 212;

“outcome meeting” means, a meeting of creditors, as described in section 213.

CHAPTER 3

APPOINTMENT OF ADMINISTRATOR

Who may be
appointed
and act as
administrator

181. (1) A person may be appointed or act as the administrator of a company only if the person –

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the administration;
- (b) is not disqualified under section 182 from being appointed or acting as an administrator;
- (c) has certified in writing that the person –

- (i) is qualified under section 12 to be appointed and to act as a key office holder with respect to the administration; and
- (ii) is not disqualified under section 182 from being appointed or acting as an administrator; and
- (d) has consented in writing to the appointment and has not withdrawn such consent at the time of appointment.

(2) A person who, with the person's consent, is appointed or acts as administrator of a company knowing that any of the requirements of paragraphs (a), (b) and (c) of subsection (1) have not been met, commits an offence.

182. (1) The following persons and their related parties shall be disqualified from being appointed or from being acting as an administrator of a company being a person who is or who has :—

Disqualifications
from being
appointed
or acting as
administrator

- (a) within the period of two years immediately preceding the date of commencement of the administration been a creditor of the company, except as a liquidator of the company;
- (b) within the period of two years immediately preceding the date of commencement of the administration been a director or other officer or an auditor or employee of the company or of a related company;
- (c) had within the period of two years preceding the date of commencement of the administration —
 - (i) a direct interest in a share issued by the company or by a related company; or

(ii) an indirect interest in five per cent or more of any class of shares issued by the company or by a related company; or

(d) been a receiver of property or appointee in respect of property of the company within the period of three years immediately preceding the date of commencement of the administration.

(2) A person who is appointed or acts as an administrator when disqualified under subsection (1) commits an offence.

Who may
appoint an
Administrator

183. (1) Subject to subsection (2), an administrator may be appointed by –

- (a) the company, under section 185;
- (b) the board of the company, under section 186;
- (c) a liquidator or a provisional liquidator, under section 188;
- (d) a secured creditor or a receiver, under section 189; or
- (e) the court, under section 190.

(2) If the company is already in administration, an administrator may not be appointed except –

- (a) by the creditors, as a replacement administrator for an administrator that the creditors have removed, under paragraph (a) of subsection (2) of section 254;
- (b) by the appointer of the first administrator, under subsection (4) of section 253;
- (c) by the court; or

- (d) pursuant to a process specified by the court under sub-paragraph (ii) of paragraph (a) of subsection (5) of section 253.

184. (1) Two or more persons may be appointed as administrators in any case where this Part provides for the appointment of an administrator.

Appointment
of two or
more persons
as
Administrators

(2) Where two or more persons are appointed as administrators –

- (a) an administrator’s functions and powers may be performed or exercised by any one of them, or by any two or more of them together, except so far as the resolution, instrument or order appointing them provides otherwise;
- (b) any liability of the persons as administrators shall be joint and several; and
- (c) a reference in this Act to an administrator refers to whichever one or more of the administrators as the case requires.

185. (1) Subject to section 187, a company may, by ordinary resolution, appoint an administrator where the company has, by resolution, decided that –

Appointment
of
Administrator
by a company

- (a) in the opinion of the shareholders voting for the resolution, the company is or is likely to become insolvent; and
- (b) an administrator of the company should be appointed.

(2) An appointment under subsection (1) shall be in writing.

Appointment
of an
Administrator
by the board of
the company

186. (1) Subject to section 187, the board of a company may, by resolution, appoint an administrator where the board of the company has, by resolution, decided that –

- (a) in the opinion of the directors voting for the resolution, the company is or is likely to become insolvent; and
- (b) an administrator of the company should be appointed.

(2) An appointment under subsection (1) shall be in writing.

(3) Where the articles of the company vest the management of the company in the board of the company, in the case of conflict between the views of shareholders and those of the board on the matter referred to in paragraph (b) of subsection (1) or as to who should be appointed as administrator, the views of the board shall prevail.

Restriction on
appointment of
the
administrator
by the board
of the
company or
board

187. (1) An administrator may not be appointed under section 185 or section 186 after a liquidation has commenced.

(2) Where an application under section 190 or paragraph (c) of subsection (2) of section 298 has been made and served on the company, and is pending, an administrator may not be appointed under section 185 or section 186, unless –

- (a) the appointment is made within seven working days after the application is served on the company;
- (b) the application was made by a creditor under paragraph (d) of subsection (1) of section 190 or paragraph (c) of subsection (2) of section 298, with the prior, written consent of that creditor;
- (c) with the permission of the court; or

(d) as a replacement administrator to fill a vacancy in the office of administrator, where the previous administrator was appointed in accordance with –

(i) one of the preceding paragraphs of this subsection; or

(ii) this paragraph.

(3) During a receivership of the whole, or substantially the whole, of the company's property and undertaking, an administrator may not be appointed under section 185 or 186 except –

(a) with the prior, written consent of the person by whom or in whose interests the receiver was appointed;

(b) with the permission of the court; or

(c) as a replacement administrator to fill a vacancy in the office of administrator, where the previous administrator was appointed in accordance with –

(i) one of the preceding paragraphs of this subsection; or

(ii) this paragraph.

188. (1) Subject to subsections (3) and (4), the liquidator or provisional liquidator of a company may appoint an administrator where the liquidator or provisional liquidator thinks that –

Appointment
of
Administrator
by a liquidator
or provisional
liquidator

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

(b) if an administrator is appointed, either –

- (i) the survival of the company or the whole or part of its business is reasonably capable of being achieved; or
- (ii) a better return for the creditors and shareholders may be achieved.

(2) An appointment under subsection (1) shall be in writing.

(3) The liquidator, or a connected party of the liquidator, may not be appointed as administrator unless either of the following is first obtained –

- (a) the approval of the creditors by resolution; or
- (b) the permission of the court.

(4) The appointment of an administrator under subsection (1) shall suspend the liquidation or provisional liquidation, including the powers of the liquidator or provisional liquidator, as the case may be, to act on the company's behalf:

Provided however, nothing in this subsection shall construe that the liquidator or provisional liquidator, as the case may be, shall be removed from office with the appointment of an administrator under subsection (1).

Appointment of
Administrator
by a secured
creditor

189. (1) Subject to subsection (3), a secured creditor who holds an encumbrance over the whole, or substantially the whole, of a company's property and undertaking, or a receiver appointed by that person, may appoint an administrator where the encumbrance has become, and is still, enforceable.

(2) An appointment under subsection (1) shall be in writing.

(3) A secured creditor who appoints an administrator under subsection (1) shall give written notice of such appointment to the company as soon as practicable and in any event before the close of the next working day after appointment.

(4) The secured creditor or receiver may not appoint an administrator if the company is already in liquidation.

190. (1) Subject to subsection (2), the court may appoint an administrator on the application of one of the following: –

Appointment
of
Administrator
by a court

- (a) the company;
- (b) one or more directors of the company;
- (c) a contributory of the company;
- (d) a creditor (including a contingent or prospective creditor) of the company;
- (e) if the company is in liquidation, the liquidator;
- (f) where a provisional liquidator has been appointed, the provisional liquidator;
- (g) the Registrar; or
- (h) the Authority.

(2) The court may appoint an administrator where the court is satisfied that –

- (a) the company is or is likely to become insolvent but, if an administrator is appointed, either –
 - (i) the survival of the company or the whole or part of its business is reasonably capable of being achieved; or

- (ii) a better return for the creditors and shareholders may be achieved than would be likely if the liquidation of the company were to commence immediately; or

(b) it is just and equitable to do so.

Commencement
of
administration
to be recorded

191. (1) Where an administrator is appointed under section 185, the company shall record in the resolution appointing the administrator the date on which, and the time at which, the resolution was passed.

(2) Where an administrator is appointed under section 186, the board of the company shall record in the resolution appointing the administrator the date on which, and the time at which, the resolution was passed.

(3) Where an administrator is appointed under section 188, the liquidator or provisional liquidator, as the case may be, shall record in the instrument appointing the administrator the date on which, and the time at which, the instrument was made.

(4) Where an administrator is appointed under section 189, the secured creditor or receiver appointing the administrator shall record in the instrument appointing the administrator the date on which, and the time at which, the instrument was made.

(5) Where an administrator is appointed by court under section 190, the court shall record in the order appointing the liquidator the date and time of the making of such order .

Appointment of
Administrator
may not be
revoked

192. The appointment of an administrator may not be revoked, except where the administrator is removed by –

- (a) the court; or
- (b) the creditors, under this Part.

193. (1) An administrator shall –

Notice of
administrator's
appointment
and details

- (a) before the close of the next working day after appointment, give written notice of the appointment to the Registrar and Authority;
- (b) as soon as practicable, and in any event before the close of the next working day after appointment, give written notice of the appointment to each person who holds an encumbrance over the whole, or substantially the whole, of the company's property and undertaking; and
- (c) within two working days after appointment –
 - (i) give public notice of the administrator's appointment; and –
 - (ii) send a copy of the public notice to the Registrar and Authority.

(2) The contents of the Public notice shall include –

- (a) the administrator's full name;
- (b) the date of the appointment;
- (c) the identity of the appointer of the administrator and, where the appointer was the court, the identity of the person on whose application the appointment was made; and
- (d) the administrator's office address and contact number to which, during normal working hours, inquiries may be directed.

(3) Where the appointment of an administrator is in addition to an administrator who already holds office or is in place of a person who has vacated office as administrator, each notice under subsection (1) shall state that fact.

(4) In the event of any change in an administrator's office address or contact number, the administrator shall, within two working days –

- (a) give public notice of the new address or contact number of the administrator, as the case may be; and
- (b) send a copy of the public notice to the Registrar and Authority.

(5) A failure to comply with this section shall not affect the validity of a person's appointment as administrator.

(6) An administrator who fails to comply with this section commits an offence.

Documents
to refer to
administration

194. (1) For so long as a company is in administration, the administrator shall ensure that –

- (a) every document issued or signed by or on behalf of the company or the administrator shall have the words "in administration" after the name of the company where it first appears; and
- (b) if the company has one or more websites, each page of each website shall state prominently that the company is in administration.

(2) A failure to comply with subsection (1) shall not affect the validity of –

- (a) a person's appointment as administrator; or
- (b) any document.

(3) Every person who fails to comply with subsection (1) commits an offence.

195. (1) Where a company in administration has changed its name less than six months before the commencement of the administration, the administrator shall ensure that –

Documents in administration to refer to the change of name

- (a) every document issued or signed by or on behalf of the company or the administrator shall include its former name; and
- (b) if the company has one or more websites, each page of each website shall include its former name.

(2) A failure to comply with subsection (1) shall not affect the validity of –

- (a) a person's appointment as administrator; or
- (b) any document.

(3) Every person who fails to comply with subsection (1) commits an offence.

CHAPTER 4

EFFECTS OF ADMINISTRATION

196. (1) Subject to sections 202 and 203, during the administration of a company, no person shall enforce –

No enforcement of encumbrance during administration

- (a) an encumbrance over property of the company; or
- (b) an encumbrance over property of a third party granted in respect of a debt, liability or other obligation of the company,

except with –

- (c) the prior, written consent of the administrator; or

(d) the permission of the court on such terms and conditions as necessary.

(2) The administrator may give consent under paragraph (c) of subsection (1) where it is satisfied that the enforcement of the encumbrance does not harm the interests of the creditors as a whole.

(3) The administrator shall not be liable in damages for declining to give consent under paragraph (c) of subsection (1).

(4) The court may give permission under paragraph (d) of subsection (1) where it is satisfied that substantial injustice would otherwise result.

No recovery of
property during
administration

197. (1) Subject to sections 202 and 203 during the administration of a company, the owner or lessor of property that is used or occupied by, or is in the possession of, the company, including under a hire-purchase agreement, shall not take possession of the property or otherwise recover it, except with –

(a) the prior, written consent of the administrator; or

(b) the permission of the court on such terms and conditions as necessary.

(2) The administrator may give consent under paragraph (a) of subsection (1) where it is satisfied that the taking possession or other recovery of the property does not harm the interests of the creditors as a whole.

(3) The administrator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (1).

(4) The court may give permission under paragraph (b) of subsection (1) where it is satisfied that substantial injustice would otherwise result.

198. (1) During the administration of a company, no formal proceeding against the company or any of its property shall be commenced or continued, except with –

(a) the prior, written consent of the administrator; or

(b) the permission of the court on such terms and conditions as may be necessary.

No
commencement
or continuation
of proceedings
during
administration

(2) For the purposes of subsection (1), “formal proceeding” includes –

- (a) any legal proceeding; and
- (b) any mediation or arbitral process or other formal adversarial process.

(3) The administrator may give consent under subsection (1)(a) where it is satisfied that the commencement or continuation of the proceeding does not harm the interests of the creditors as a whole.

(4) The administrator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (1).

(5) The court may give permission under paragraph (b) of subsection (1) where it is satisfied that substantial injustice would otherwise result.

199. Subject to sections 202 and 203 during the administration of a company, no execution or other legal process, or the levying of distress, against the company or any of its property shall be commenced or continued, except with the permission of the court on such terms and conditions as may be necessary.

No execution
or other
process during
administration

200. (1) Subject to subsection (2), a creditor shall not be entitled to the benefit of any execution or other legal process or distress against a company in administration or any of its property unless the execution or other legal process or distress was completed before the commencement of the administration, except with the permission of the court on such terms and conditions as may be necessary.

No benefit
of execution
or other
process unless
completed
before
administration

(2) For the purposes of subsection (1) –

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(3) A person who acquires property of the company in good faith –

- (a) from a Fiscal charged with an execution process; or
- (b) on which distress has been levied,

acquires good title as against the company and administrator.

(4) Nothing in this section shall affect or limit the application of sections 412, 413, 414, 415, 416, 417, 418 and 419.

Duties of
Fiscal in
administration

201. (1) This section applies to an execution process against property of a company in administration that was levied but not completed within the meaning of section 200 before the commencement of the administration.

(2) Notwithstanding any other enactment, subject to subsection (3) and unless the court orders otherwise on the application of the execution creditor, a Fiscal shall, as soon as practicable after the administration commences –

- (a) deliver to the administrator any property of the company that is in or comes into the Fiscal's possession or custody or under the Fiscal's control as a result of the execution process; and

- (b) cause the administrator to be paid –
 - (i) any proceeds of realisation of property of the company;
 - (ii) any money of the company received or seized; and
 - (iii) any money paid to avoid seizure or sale of property of the company,

under the execution process, where such proceeds or money are in or have come into the Fiscal's possession or custody or under the Fiscal's control or have been paid into court and have not already been paid out.

- (3) The Fiscal may retain or cause to be retained –
 - (a) from property delivered under paragraph (a) of subsection (2), property of a value that the Fiscal may reasonably determine to represent the costs of the execution process incurred by the Fiscal; or
 - (b) from proceeds or money paid under paragraph (b) of subsection (2), the costs of the execution process incurred by the Fiscal.

202. (1) Where, before the commencement of an administration, and by way of enforcement of –

Power
exercised before
commencement
of
administration

- (a) an encumbrance over property; or
- (b) a right of the owner or lessor of property, including under a hire-purchase agreement, to take possession of the property or otherwise recover it,

a receiver, appointee or other person who entered into possession or custody or assumed control of or exercised any other power in relation to, property of the company or of a third party nothing in sections 196, 197, 199 and 208 shall prevent the receiver, appointee or other person from performing or exercising a function or power in relation to the property.

(2) Subsection (1) of section 208 shall not apply to an agreement, transaction or dealing that affects the property referred to in subsection (1) that is entered into in the performance or exercise of a function or power of the receiver, appointee or other person referred to in subsection (1).

Application in
decision period
for permission
to enforce fixed
security

203. (1) In this section, “decision period”, with respect to a grantee of a fixed security over property of a company in administration, means the period that –

(a) begins –

(i) if notice of the appointment of the administrator is required to be given to the grantee under section 193, on the day on which that notice is received; or

(ii) in any other case, on the date of commencement of the administration; and

(b) ends at the close of the tenth working day after of commencement of the administration.

(2) A grantee of a fixed security over property of a company in administration may, within the decision period, apply to the court for an order granting the grantee permission to enforce the fixed security.

(3) A grantee who makes an application to the court under subsection (2) shall, on the day on which the application is filed with the court, shall give written notice of the application to the administrator.

(4) Within five working days after receiving a notice under subsection (3), the administrator shall file with the Registrar of the court –

- (a) a notice informing the court of whether the administrator supports or opposes the application;
- (b) a report on the property, debts and other liabilities of the company, so far as these are known to the administrator, along with a statement setting out the respects, if any, in which to the knowledge of the administrator, such report may be incomplete; and
- (c) a statement of reasons supporting or opposing the application.

(5) After receiving the documents referred to in subsection (4), the court shall conduct a hearing and –

- (a) proceed to make a determination on the application; or
- (b) where the court considers that it is essential to receive further information from either the grantee or the administrator in order to determine the application –
 - (i) adjourn the hearing for that purpose; and
 - (ii) subsequently make a determination on the application.

(6) In making a determination under subsection (5), the court may make an order granting permission to the grantee to enforce the grantee's fixed security where the court is satisfied that –

- (a) granting permission for the application shall not materially adversely affect the objective referred to in paragraph (d) of section 178; and

- (b) in all the circumstances of the case, prejudice will be caused to the grantee if the application is not granted, that outweighs the prejudice that will be caused to the other persons having an interest in the company from the granting of the application.

(7) The court may make an order under subsection (6) on such terms and conditions as may be necessary, including –

- (a) that a receiver or other person involved in the enforcement shall not perform or exercise specified functions or powers except as permitted by a further order of the court;
- (b) that enforcement be limited to specified property;
- (c) that enforcement by a sale shall be conducted in a manner laid down by the court or subject to further permission of or directions from the court.

(8) A grantee granted permission under subsection (6) shall, from time to time at intervals not exceeding three months, report to the administrator, in such manner and in such level of detail as may be prescribed, on the enforcement of the fixed security.

(9) In the case of perishable property, the court may on an application under subsection (2) make an order granting permission to the grantee to enforce the fixed security so far as it is a fixed security over perishable property and to hold any proceeds recovered by the grantee on trust for the administrator pending the conduct of a hearing under subsection (5) and the making of an order under subsection (6).

204. Nothing in this Part shall require the consent of the administrator, or the permission of the court, for the giving of notice to the company under –

No consent
or permission
required for
giving notice

- (a) an agreement relating to property that is used or occupied by, or is in the possession of, the company; or
- (b) a security agreement.

205. (1) The appointment of an administrator does not remove the directors of the company from office.

Effect of
administration
on directors
and other
agents of the
company

(2) Subject to subsections (3) and (4), a director of a company that is in administration may not perform or exercise, or purport to perform or exercise, a function or power as an officer of the company except –

- (a) to appeal against an order made under section 190 appointing an administrator, in such manner, within such period, and with such requirements for notice of intention to appeal as may be prescribed, but the director shall not have any resort to the property of the company in connection with any such appeal subject to any order the court may make at the conclusion of the appeal;
- (b) with the prior, written consent of the administrator; or
- (c) as expressly permitted by this Part.

(3) The administrator may give consent under paragraph (b) of subsection (2) where it is satisfied that the performance or exercise of the function or power by the director is in the interests of the creditors as a whole.

(4) The administrator shall not be liable in damages for declining to give consent under paragraph (b) of subsection (2).

(5) The appointment of an administrator revokes the authority of any agent of the company appointed by or on behalf of the board of the company.

Requirement
to provide
information to
administrator

206. (1) Where an administrator is appointed, every director and other officer of the company shall –

- (a) as soon as practicable and in any event within five working days after the appointment make available to the administrator all books, records and documents relating to the affairs, business, property and financial circumstances of the company in the person's possession or custody or under the person's control;
- (b) if required to do so by the administrator, verify by affidavit within a reasonable period that the books, records and documents are complete and correct;
- (c) if the company has a common seal, promptly make the common seal available for use by the administrator; and
- (d) give the administrator such assistance as the administrator may reasonably request.

(2) On the application of the administrator, the court may make an order requiring a director or other officer of the company to comply with subsection (1).

(3) A verification under paragraph (b) of subsection (1) may be qualified in relation to specific matters dealt with in the books, records and documents where the person giving the verification does not –

- (a) consider the books, records and documents to be complete and correct; or

- (b) have the knowledge necessary to give a verification.

207. The appointment of an administrator does not automatically terminate a contract of employment to which the company is a party.

Effect of
administration
on employees

208. (1) Subject to section 202, an agreement, transaction or dealing by a company in administration, or by a person on behalf of the company, that affects property of the company is void unless the agreement, transaction or dealing was entered into –

Effect of
administration
when dealing
with property

- (a) by the administrator, on the company's behalf;
- (b) with the prior, written consent of the administrator;
or
- (c) under an order of the court.

(2) The administrator may give consent under paragraph (b) of subsection (1) where it is satisfied that the agreement, transaction or dealing is in the interests of the creditors as a whole.

(3) The administrator is not liable in damages for declining to give consent under paragraph (b) of subsection (1).

(4) The court may by order give effect to an agreement, transaction or dealing that is void under subsection (1).

(5) Subsection (1) shall not apply to a payment, made by a bank, that is –

- (a) out of an account kept by the company with the bank;
- (b) in good faith and in the ordinary course of the bank's banking business; and

(c) on or before the earlier of –

- (i) the date on which the bank received written notice given by the administrator that the administration had commenced; and
- (ii) the day on which the bank had reason to believe that the company was in administration.

(6) A director or other officer of the company who –

- (a) purports, on the company's behalf, to enter into an agreement, transaction or dealing that is void under subsection (1); or
- (b) is in any other way concerned in, or a party to, an agreement, transaction or dealing that is void under subsection (1),

commits an offence.

(7) The court may order a director or other officer who is convicted of an offence under subsection (6) to compensate any person, including the company, that has suffered loss as a result of the act or omission constituting the offence.

(8) If any question arises as to whether, on the date on which an administrator was appointed, an agreement, transaction or dealing that affects property of the company was entered into before or after the time at which the administrator was appointed, that agreement, transaction or dealing shall be presumed, unless the contrary is proved, to have been entered into after that time.

(9) Notwithstanding any other enactment, no person may, as against the administrator, claim a lien over a book, record or document of the company.

209. (1) Subject to this section –

Effect of
administration
on transfer of
shares

- (a) a share in a company in administration shall not be transferred; and
- (b) the status of a shareholder of a company in administration, as to its liabilities, may not be altered.

(2) The administrator may consent to the transfer of a share in the company in administration where the administrator is satisfied that the transfer is in the interests of the creditors as a whole.

(3) The administrator shall not be liable in damages for declining to give consent under subsection (2).

(4) The court may, where it is satisfied that substantial injustice would otherwise result, make an order –

- (a) for the transfer of a share of a company in administration; or
- (b) altering the status of a shareholder of a company in administration, as to its liabilities.

(5) Nothing in this section shall affect or limit the application of section 46 of the Companies Act.

210. (1) In this section, “insolvency-related term” is a provision of an agreement for the supply of an essential good or service to a company under which –

Essential
services in
administration

- (a) the agreement or the supply would terminate, or any other thing would take place, because the administration of the company commences; or
- (b) the supplier would be entitled to terminate the agreement or the supply, or to do any other thing, because the administration of the company commences.

(2) Notwithstanding any other enactment, a supplier of an essential good or service shall not –

- (a) refuse to supply the good or service to an administrator, or to a company in administration, by reason of the company's default in paying charges due for the good or service in relation to a period before the commencement of the administration;
- (b) make it a condition of the supply of the good or service to an administrator, or to a company in administration, that payment be made of outstanding charges due for the good or service in relation to a period before the commencement of the administration; or
- (c) rely on an insolvency-related term of the agreement for the supply of the good or service, except with the prior, written consent of the administrator.

(3) The administrator may give consent under paragraph (c) of subsection (2) where it is satisfied that the reliance on the insolvency-related term is in the interests of the creditors as a whole.

(4) The administrator shall not be liable in damages for declining to give consent under paragraph (c) of subsection (2).

(5) For the purposes of the Fourth Schedule the charges incurred by an administrator for the supply of an essential good or service are an expense of the administration.

CHAPTER 5

ADMINISTRATION ROUTES

A - PROVISIONS APPLICABLE TO THE STANDARD AND EXPEDITED ROUTES

211. (1) If the administrator has decided under subsection (5) of section 180 to pursue the standard route, sections 212, 213 and 214 shall apply.

Provisions
applicable to
the standard
and expedited
routes

(2) If the administrator has decided under subsection (5) of section 180 to pursue the expedited route, sections 215 and 216 shall apply.

B - STANDARD ROUTE

212. (1) This section applies in the circumstances referred to in Subsection (1) of section 211.

Initial meeting

(2) The administrator shall hold an initial meeting within ten working days after commencement of the administration.

(3) The following business shall be conducted at the initial meeting –

- (a) consideration by creditors of the documents tabled at the meeting;
- (b) a resolution of creditors on whether or not to replace the administrator under paragraph (a) of subsection (1) of section 254; and
- (c) if the administrator is seeking to establish an administration creditors' committee, one or more resolutions shall be made by the creditors –
 - (i) on whether or not to establish such a committee under section 217; and

- (ii) if such a committee is to be established, who are to be appointed as members of that committee.

(4) At the initial meeting, the administrator shall table –

- (a) a statement to the effect that the conduct and performance of Insolvency Practitioners is monitored by the Authority and providing contact details of the Authority;
- (b) the written certification specified in paragraph (c) of section 181 (1);
- (c) the written consent specified in paragraph (d) of section 181 (1);
- (d) an interests statement, signed by the administrator, that complies with section 30;
- (e) a statement of pre-administration costs, signed by the administrator, if the administrator seeks the payment of any unpaid pre-administration costs that complies with section 31;
- (f) the basis or bases and, any applicable hourly percentage rate or rates, and fixed level or levels of the administrator's proposed remuneration; and
- (g) where a directors' statement has been provided to the administrator under section 219, that statement.

(5) At least seven working days before the meeting is required under subsection (2) to be held, the administrator shall convene the initial meeting by –

- (a) giving written notice of the initial meeting to as many of the company's creditors as is reasonably practicable; and

- (b) giving public notice of the meeting.
- (6) A notice under paragraph (a) of subsection (5) shall –
- (a) state that an administrator has been appointed;
 - (b) state the following :–
 - (i) the administrator’s full name;
 - (ii) the date of the appointment;
 - (iii) the identity of the appointer of the administrator and, where the appointer was the court, the identity of the person on whose application the appointment was made; and
 - (iv) the administrator’s office address and contact number to which, during normal working hours, inquiries may be directed;
 - (c) specify –
 - (i) the documents to be tabled at the meeting; and
 - (ii) the business to be conducted at the meeting;
 - (d) if the administrator is seeking to establish an administration creditors’ committee –
 - (i) summarise the matters referred to in section 217; and
 - (ii) invite nominations for membership of such a committee.
- (7) The Fifth Schedule shall apply to an initial meeting.

(8) Within two working days after the holding of the initial meeting, the administrator shall send –

- (a) a copy of the statement referred to in paragraph (a) of subsection (4);
- (b) a copy of the interests statement referred to in paragraph (d) of subsection (4); and
- (c) a copy of the notice referred to in paragraph (a) of subsection (5),

to the Registrar and Authority.

(9) An administrator who fails to comply with subsection (2), (5), (6) or (8) commits an offence.

Outcome
meeting

213. (1) This section applies to circumstances referred to in subsection (1) of section 211 and subsection (3) of section 216.

(2) The administrator shall, within the convening period, convene an outcome meeting.

(3) On the application of the administrator, the court may extend the convening period, but shall not do so if the application has been made after the convening period has expired.

(4) The creditors may by resolution extend the convening period, but shall not do so after the convening period has expired.

(5) The convening period may be extended under subsection (3) or (4) where it has already been extended under one or both of those subsections.

(6) At least seven working days before the meeting is required under subsection (8) to be held, the administrator shall convene the outcome meeting by –

- (a) giving written notice of the outcome meeting to as many of the company's creditors as is reasonably practicable; and
- (b) giving public notice of the meeting.

(7) The administrator shall enclose the following documents with a notice under paragraph (a) of subsection (6): –

- (a) the directors' statement provided to the administrator under section 219, if not tabled at the initial meeting;
- (b) a report by the administrator about –
 - (i) the affairs, business, property and financial circumstances of the company;
 - (ii) all agreements, transactions and dealings, entered into after commencement of the administration, affecting property of the company; and
 - (iii) any other matter material to the creditors' decisions to be considered at the meeting;
- (c) a statement setting out the administrator's opinion, with reasons for that opinion, as to –
 - (i) whether it would be in the creditors' interests for the company to make a deed of company arrangement;
 - (ii) whether it would be in the creditors' interests for a liquidator to be appointed; or

- (iii) whether it would be in the creditors' interests for the administration to end otherwise; and
- (d) where a deed of company arrangement is proposed, a statement by the administrator –
 - (i) setting out the terms of the proposed deed;
 - (ii) explaining the effect of approval of the proposed deed, and in particular its commercial impact; and
 - (iii) containing such other information as may be prescribed.

(8) The administrator shall hold the outcome meeting within five working days after the end of the convening period.

(9) An outcome meeting may be adjourned to a day that is not more than thirty working days after the first day on which the meeting was held, unless the court on the application of the administrator orders that the meeting be adjourned to a date later than this.

(10) An administrator who fails to comply with any of subsections (2), (6) and (8) commits an offence.

Business
at outcome
meeting

214. (1) This section applies in the circumstances referred to in subsection (1) of sections 211 and subsection (3) of 216.

(2) At an outcome meeting, the creditors may –

- (a) by resolution, approve a proposed deed of company arrangement specified in the resolution, even if its terms are different from those set out in the administrator's statement referred to in paragraph (d) of subsection (7) of section 213;

(b) unless the company is already in liquidation, by resolution appoint a liquidator; or

(c) by resolution end the administration.

(3) The Fifth Schedule shall apply to an outcome meeting.

(4) The administrator and the directors of the company shall, before the meeting votes on any resolution, inform the meeting of any voting arrangement of which the administrator or a director, as the case may be, is aware that requires any creditor to vote in a particular way on any resolution that will or may be voted on by the meeting.

(5) A deed of company arrangement approved by the creditors under paragraph (a) of subsection (2) takes effect as if made by the company, on the day on which, and at the time at which, the resolution approving the deed is passed.

(6) Subject to subsection (7), the directors of the company shall attend the outcome meeting, including any occasion to which the meeting is adjourned, but cannot be required to answer questions at the meeting.

(7) A director need not attend the outcome meeting where –

(a) the director has a valid reason for not attending; or

(b) the administrator has, or the creditors by resolution have, excused the director from attending.

(8) A director of the company attending the outcome meeting shall for all or part of the remainder of the meeting, leave the meeting, if the creditors, by resolution, decide that the director should do so.

(9) The administrator shall record in the resolution of creditors made under subsection (2) the date on which, and the time at which, the resolution was passed.

(10) Within five working days after the outcome meeting, the administrator shall –

- (a) give written notice of the outcome of the resolution of creditors made under subsection (2), to as many of the company's creditors as is reasonably practicable;
- (b) give public notice of that outcome; and
- (c) send a copy of the notice referred to in paragraph (a) to the Registrar and Authority.

C - EXPEDITED ROUTE

Combined
initial and
outcome
meeting

215. (1) This section applies in the circumstances referred to in subsection (2) of section 211.

(2) The administrator shall hold a combined initial and outcome meeting within ten working days after commencement of the administration.

(3) The following business shall be conducted at the combined initial and outcome meeting : –

- (a) the business referred to in subsection (3) of section 212; and
- (b) a resolution of creditors on approval of a proposed deed of company arrangement specified in the resolution.

(4) The administrator shall table at the combined initial and outcome meeting the documents referred to in paragraphs (a), (b), (c), (d), (e) and (f) of subsection (4) of section 212.

(5) At least seven working days before the meeting is required to be held under subsection (2), the administrator shall convene the combined initial and outcome meeting by –

- (a) giving written notice of the combined initial and outcome meeting to as many of the company's creditors as is reasonably practicable; and
- (b) giving public notice of the meeting.

(6) A notice under paragraph (a) of subsection (5) shall –

- (a) state that an administrator has been appointed;
- (b) state the following :–
 - (i) the administrator's full name;
 - (ii) the date of the appointment;
 - (iii) the identity of the appointer of the administrator and, where the appointer was the court, the identity of the person on whose application the appointment was made; and
 - (iv) the administrator's office address and contact number to which, during normal working hours, inquiries may be directed;
- (c) specify –
 - (i) the documents to be tabled at the meeting; and
 - (ii) the business to be conducted at the meeting;
- (d) if the administrator is seeking to establish an administration creditors' committee –

- (i) summarise the matters referred to in section 217; and
- (ii) invite nominations for membership of an administration creditors' committee.

(7) The administrator shall enclose the following documents with a notice under paragraph (a) of subsection (5):—

- (a) the directors' statement provided to the administrator under section 219;
- (b) a report by the administrator about —
 - (i) the affairs, business, property and financial circumstances of the company;
 - (ii) all agreements, transactions and dealings, entered into after commencement of the administration, affecting property of the company; and
 - (iii) any other matter material to the creditors' decisions to be considered at the meeting;
- (c) a statement setting out the administrator's opinion, with reasons for that opinion, that it would be in the creditors' interests for the company to make a deed of company arrangement;
- (d) a statement by the administrator —
 - (i) setting out the terms of the proposed deed of company arrangement;
 - (ii) explaining the effect of approval of the proposed deed, and in particular its commercial impact; and

(iii) containing such other information as may be prescribed; and

(e) a statement containing such information about the expedited procedure as may be prescribed.

(8) The Fifth Schedule shall apply to a combined initial and outcome meeting.

(9) Subject to subsection (10), the directors of the company shall attend the combined initial and outcome meeting, including any occasion to which the meeting is adjourned, but cannot be required to answer questions at the meeting.

(10) A director need not attend the combined initial and outcome meeting where –

(a) the director has a valid reason for not attending;
or

(b) the administrator has, or the creditors by resolution have, excused the director from attending.

(11) A director of the company attending the combined initial and outcome meeting shall for all or part of the remainder of the meeting, leave the meeting if the creditors, by resolution, decide that the director should do so.

(12) An administrator who fails to comply with subsection (2), (5) or (6) commits an offence.

216. (1) This section applies in the circumstances referred to in subsection (2) of section 211. Deed review
hearing

(2) After hearing such views of creditors as are expressed on this matter at the combined initial and outcome meeting, the administrator shall –

(a) if the creditors, by the requisite majorities, approves a proposed deed of company arrangement by resolution, even if its terms are different from those set out in the administrator's statement referred to in paragraph (d) of subsection (7) of section 215 –

(i) promptly apply to the court for a deed review hearing; or

(ii) notwithstanding the approval, if the administrator considers that the proposed deed is fundamentally inconsistent with furthering the achievement of the administrator's objective referred to in paragraph (d) of section 178, with immediate effect pursue the standard route in lieu of the expedited route and convene an outcome meeting; or

(b) if the creditors, by the requisite majorities, do not approve a proposed deed of company arrangement by resolution –

(i) with immediate effect pursue the standard route in lieu of the expedited route; and

(ii) convene an outcome meeting.

(3) If the administrator is required to convene an outcome meeting under paragraph (a) or (b) of subsection (2), then sections 213 and 214 shall apply.

(4) After an application has been made under sub-paragraph (i) in paragraph (a) of subsection (2), and until the application has been disposed of by the court, the administration shall continue.

(5) There shall be submitted with an application under sub-paragraph (i) in paragraph (a) of subsection (2) –

- (a) copies of the interests statement with respect to the administrator tabled at the combined initial and outcome meeting;
 - (b) if the proposed deed administrator is not the administrator, the copies of the interests statement with respect to the deed administrator tabled at the combined initial and outcome meeting or other meeting of creditors;
 - (c) if the administrator seeks the payment of any unpaid pre-administration costs, copies of the statement of pre-administration costs tabled at the combined initial and outcome meeting;
 - (d) copies of the documents enclosed with the notice of the combined initial and outcome meeting under subsection (7) of section 215;
 - (e) copies of the minutes of the combined initial and outcome meeting; and
 - (f) copies of such other information as may be prescribed.
- (6) At a deed review hearing –
- (a) where the court is satisfied that the proposed deed of company arrangement would, if it were to take effect, comply with the requirements in section 223, the court shall order that the proposed deed be binding;
 - (b) where the court is not satisfied that the proposed deed of company arrangement would, if it were to take effect, comply with the requirements in section 223, the court shall make such order as may be necessary, taking appropriate account of the views of the creditors representing the requisite majority .

(7) In making an order under subsection (6), the court may, where necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

(8) Within five working days after the making of an order under subsection (6), the administrator shall –

- (a) give written notice of the order to as many of the company's creditors as is reasonably practicable;
- (b) give public notice of the order and send a copy of the notice referred to in paragraph (a) to the Registrar and Authority.

(9) A copy of every order made under subsection (6) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

(10) Where a deed of company arrangement is binding by virtue of an order made under subsection (6), the deed shall be deemed to have been made by the company –

- (a) on the day on which, and at the time at which, the order is made; or
- (b) on such other day, and at such other time, as the court may order.

D - MATTERS APPLYING TO BOTH ROUTES

Creditors'
Committee in
Administration

217. (1) At any time during an administration and if an administration creditors' committee has not already been established, an administrator may, subject to subsection (2), seek the establishment of such a committee.

(2) The establishment of an administration creditors' committee and appointments to such a committee shall require one or more resolutions of creditors adopted at –

- (a) an initial meeting;
- (b) a combined initial and outcome meeting; or
- (c) another meeting of creditors, the notice of which shall –
 - (i) summarise the matters referred to in this section; and
 - (ii) invite nominations for membership of the administration creditors' committee.

(3) The Fifth Schedule shall apply to a meeting referred to in paragraph (c) of subsection (2).

(4) If established –

- (a) an administration creditors' committee shall have the following functions :–
 - (i) to consult with the administrator about matters relating to the administration; and
 - (ii) to consider reports from the administrator sent under subsection (5); and
- (b) such a committee may not give directions to the administrator.

(5) If an administration creditors' committee is established, the administrator shall send reports to the committee containing such information, in such manner, and within such periods as may be prescribed.

(6) A person shall not be eligible to be a member of an administration creditors' committee unless the administrator is satisfied that the person is –

- (a) a creditor;
- (b) the agent of a creditor under a general power of attorney; or
- (c) authorised in writing by a creditor to be a member.

(7) With respect to an administration creditors' committee, the following matters shall be subject to such requirements, restrictions and limitations as may be prescribed –

- (a) membership and termination of membership of the committee;
- (b) notice of the establishment of the committee and of matters relating to the committee;
- (c) the procedure for convening meetings of the committee;
- (d) protection of acts, omissions or decisions done or made by members of the committee;
- (e) reimbursement of expenses of members of the committee; and
- (f) transactions by members of the committee and their related parties.

(8) The consequences of defects in the qualifications, nomination or election of members of an administration creditors' committee shall be as may be prescribed.

(9) Where, by reason of vacancies in an administration creditors' committee, the committee is unable to act, the administrator shall as soon as practicable give written notice of that fact to each known creditor.

Meetings in
administration
of
shareholders,
creditors and
committees

218. (1) An administrator shall at all times until the end of the administration convene such meetings of –

- (a) the shareholders as the administrator sees fit;
- (b) the creditors as the administrator sees fit; and

(c) an administration creditors' committee (if any) –

- (i) as the administrator sees fit;
- (ii) as that committee may reasonably request, within five working days after receiving the committee's request.

(2) The Fifth Schedule shall apply to the meetings referred to in paragraph (b) of subsection (1).

(3) The requirements for notice and the conduct of business of meetings convened under paragraph (c) of subsection (1) shall be as may be prescribed.

219. (1) Within five working days after the commencement of administration of a company, or within any period of extension under subsection (3), the directors of the company shall provide to the administrator a full statement about the affairs, business, property and financial circumstances of the company, showing as at the latest practicable date before the provision of the statement –

Directors'
Statement in
Administration

- (a) the particulars of its property, including any inventory of stock and the total amount expected to be realised therefrom;
- (b) the debts and other liabilities of the company;
- (c) the name and address of each of its creditors;
- (d) the encumbrance or encumbrances, if any, held by each creditor; and
- (e) the date on which each encumbrance was created.

(2) The statement in subsection (1) shall be supported by affidavits by the directors of the company, or by such of

the following persons as the administrator may reasonably request :—

- (a) a person other than a director who is or has been an officer of the company;
- (b) a person who has taken part in the formation, promotion or management of the company at any time within the period of twelve months immediately preceding the date of commencement of the administration; or
- (c) a person who is or has been within that period a director or other officer of or in the employment of a body corporate that is, or within that period was, a director or other officer of the company to which the statement relates.

(3) The administrator or the court may extend the time limit for the provision of a statement under subsection (1).

(4) If a person fails to comply with subsection (1) or subsection (2), that person commits an offence.

When
administration
ends

220. (1) An administration ends on the day on which, and at the time at which —

- (a) an outcome meeting is not convened within the convening period, unless an application has been made under —
 - (i) subsection (3) of section 213; or
 - (ii) sub-paragraph (i) of paragraph (a) of subsection (2) of section 216;
- (b) an application has been made under subsection (3) of section 213, the convening period has expired after the application was made and the application is refused;

- (c) an outcome meeting is convened but is not held within the period referred to in subsection (8) of section 213;
- (d) the creditors by resolution at an outcome meeting approve a proposed deed of company arrangement under paragraph (a) of subsection (2) of section 214;
- (e) the creditors by resolution at an outcome meeting appoint a liquidator under paragraph (b) of subsection (2) of section 214 or a liquidator is otherwise appointed;
- (f) the creditors by resolution at an outcome meeting end the administration under paragraph (c) of subsection (2) of section 214;
- (g) a deed of company arrangement is deemed under subsection (10) of section 216, to have been made by the company; or
- (h) the court ends the administration under section 263 or in the exercise of any other power the court may exercise.

(2) Where an administration ends under paragraphs (a), (b), (c), (e) and (h) of subsection (1), the company's status immediately prior to the administration, of being in liquidation or not being in liquidation, is restored.

CHAPTER 6

DEEDS OF COMPANY ARRANGEMENT AND DEED ADMINISTRATORS

A - DEEDS OF COMPANY ARRANGEMENT

221. (1) The terms of a deed of company arrangement, including those required to be included in a statement by the administrator under sub-paragraph (i) of paragraph (d) of subsection (7) of section 213 or sub-paragraph (i) of paragraph (d) of subsection (7) of section 215 shall include –

Content of a
deed

- (a) the identity of the deed administrator;
- (b) the conditions, if any, for the deed to come into operation;
- (c) the functions, powers and duties of the deed administrator;
- (d) the functions and powers of the directors;
- (e) if and to what extent the company will be released from its debts and other liabilities;
- (f) all amendments to the terms of the company's debts and other liabilities;
- (g) reporting to creditors by the deed administrator;
- (h) the terms under which the deed may be varied; and
- (i) the circumstances in which the deed terminates.

(2) A deed of company arrangement shall be deemed to include such terms as may be prescribed, except such prescribed terms as the deed expressly excludes.

Release of
third parties
under a deed

222. (1) On an application to court by the administrator, the court may order that a deed of company arrangement, if approved, shall release from liability one or more persons, including related companies and directors of the company, that are sufficiently connected with the deed.

(2) In deciding whether or not a person is sufficiently connected with the deed of company arrangement for the purposes of subsection (1), the court shall have regard to –

- (a) whether or not the proposed release is an integral part of the deed;

- (b) whether or not the person is contributing under the deed; and
- (c) whether or not, in the absence of a release, the person would have an indemnity claim against the company if called on.

223. (1) Subject to subsection (3), under a deed of company arrangement each creditor is to receive treatment at least as favourable as that which the creditor would have received had the liquidation of the company commenced immediately prior to the taking effect of the deed. Requirements
for a deed

(2) Subject to subsections (3) and (4), a deed of company arrangement may not –

- (a) provide for a preferential claim to be paid otherwise than in priority to –
 - (i) a preferential claim ranking behind that preferential claim; or
 - (ii) a claim that is not a preferential claim;
- (b) provide for satisfaction of a materially smaller proportion of the amount of one claim than of the amount of another equally ranked claim; or
- (c) contain any term that transfers shares in the company, varies a right attaching to shares in the company or varies the liabilities of or dilutes shareholders of the company.

(3) Subsection (1) and paragraphs (a) and (b) of subsection (2) shall not apply to –

- (a) treatment, under the deed of company arrangement, to which the relevant creditor consents;
- (b) a proposal for a compromise under Part X.

(4) Paragraph (c) of subsection (2) shall not apply to any transfer, variation or dilution that the shareholders have, or relevant class of shareholders of the company has, by special resolution approved at a meeting convened for the purpose.

(5) Compliance with the requirements in subsection (1) and paragraph (b) of subsection (2) is to be assessed on the basis of –

- (a) reasonable assumptions; and
- (b) a determination of claims as at the relevant date.

(6) In determining –

- (a) the treatment that a creditor would have received, for the purposes of subsection (1), had the liquidation of the company commenced immediately prior to the taking effect of the deed; and
- (b) whether claims are equally ranked, for the purposes of paragraph (b) of subsection (2),

account is to be taken of an agreement under which a creditor has agreed to accept a lower priority in respect of a debt than that which it would otherwise have.

(7) A deed of company arrangement may not –

- (a) be unfairly prejudicial to, or unfairly discriminatory against, one or more creditors; or
- (b) be contrary to the interests of the creditors as a whole.

Extent to
which a deed
is binding

224. (1) A deed of company arrangement is binding on the company, each director and shareholder of the company, the deed administrator and each person who was entitled to vote on the resolution of creditors approving the deed.

(2) This section shall not prevent a grantee of an encumbrance from enforcing the encumbrance except so far as –

- (a) the deed provides that the grantee will not enforce the encumbrance and the grantee voted in favour of the resolution approving the deed; or
- (b) the court orders otherwise under subsection (4).

(3) This section shall not prevent an owner or lessor of property, including under a hire-purchase agreement, from taking possession of the property or otherwise recovering it except so far as –

- (a) the deed provides that the owner or lessor, as the case may be, will not take possession of the property or otherwise recover it and the owner or lessor, as the case may be, voted in favour of the resolution approving the deed; or
- (b) the court orders otherwise under subsection (4).

(4) Subject to subsection (5), on an application by an administrator or deed administrator, whichever holds office, the court may order that as from the day on which and time at which a deed of company arrangement is made by the company and for such time as may be specified in the order, which may be for a fixed period or until the occurrence of a specified event –

- (a) a grantee of an encumbrance shall not enforce the encumbrance; or
- (b) an owner or lessor of property, including under a hire-purchase agreement, shall not take possession of the property or otherwise recover it.

(5) The court may make an order under subsection (4) where it is satisfied that –

- (a) granting the application shall not materially adversely affect the purposes of the deed; and
- (b) in all the circumstances of the case, prejudice will be caused to those with an interest in the company other than the grantee, owner or lessor, as the case may be, if the application is not granted, that outweighs the prejudice that will be caused to the grantee, owner or lessor, as the case may be, from the granting of the application.

(6) An order under subsection (4) may be made subject to such terms and conditions as may be necessary.

B - DEED ADMINISTRATOR

Deed
administrator

225. (1) Where the administrator is not the same person as the deed administrator –

- (a) the administrator shall, forthwith after the deed of company arrangement is made, do all that is necessary to put the deed administrator in control of the affairs, business and property of the company that are subject to the deed; and
- (b) the deed administrator shall, as soon as practicable after taking control of such affairs, business and property, discharge any balance due to the administrator in respect of –

- (i) costs, charges and expenses properly incurred by and the remuneration of the administrator under this Act; and
- (ii) liability indemnified under paragraphs (a) and (b) of subsection (1) of section 248.

(2) The administrator shall have a lien on the property of the company subject to the deed of company arrangement, in respect of any sums comprising the balance referred to in paragraph (b) of subsection (1).

(3) A lien under subsection (2) shall have priority, over an encumbrance as accorded to a lien under subsection (3) of section 248.

226. (1) A person may not be appointed or act as deed administrator of a company unless –

Who may be
appointed and
act as deed
administrator

- (a) the person has consented in writing to the appointment and has not withdrawn the consent at the time of appointment;
- (b) the person is not prohibited either under section 213 of the Companies Act, or by an order made under section 214 of the Companies Act, from being appointed or acting as an office holder;
- (c) the person complies with such other requirements as may be prescribed; and
- (d) with respect to the person –
 - (i) the written consent specified in paragraph (a);
 - (ii) an interests statement, signed by the person, that complies with section 30; and

(iii) such other documents as may be prescribed,

have been tabled at an initial meeting, outcome meeting, combined initial and outcome meeting or other meeting of creditors.

(2) A person who, with the person's consent, is appointed or acts as a deed administrator of a company knowing that any of the requirements of paragraphs (b), (c) and (d) of subsection (1) has not been met, commits an offence.

Appointment
of two or
more deed
administrators

227. (1) Two or more persons may be appointed as deed administrators in any case where this Part provides for the appointment of a deed administrator.

(2) Where two or more persons are appointed as deed administrators –

- (a) a deed administrator's functions and powers may be performed or exercised by any one of them, or by any two or more of them together, except so far as the deed of company arrangement provides otherwise;
- (b) any liability of the persons as deed administrators shall be joint and several; and
- (c) a reference in this Act to a deed administrator refers to whichever one or more of the deed administrators as the case requires.

When deed
administration
commences
and deed
administrator
is appointed

228. (1) The deed administration of a company commences on the day on which, and at the time at which, the appointment of a deed administrator takes effect under subsection (2).

(2) The appointment of the deed administrator specified in a deed of company arrangement that is –

- (a) approved by the creditors under paragraph (a) of subsection (2) of section 214; or
- (b) binding by virtue of an order made under subsection (6) of section 216,

shall take effect on the day on which, and at the time at which, the deed of company arrangement is made.

229. A deed of company arrangement may require the deed administrator to provide security for the deed administrator's appointment.

Security for
appointment
of deed
administrator

230. Without prejudice to section 256, the appointment of a deed administrator may not be revoked, except where the deed administrator is removed by the court.

Revocation of
appointment
of deed
administrator

C - VALIDITY, VARIATION AND TERMINATION OF
DEEDS OF COMPANY ARRANGEMENT

231. (1) On the application of a person referred to in subsection (2), the court may in the case of –

Court may
rule on
validity of a
deed

- (a) a deed of company arrangement that is in force, make an order declaring the deed void; or
- (b) a proposed deed of company arrangement, make such order as may be necessary, including the granting of permission for the proposed deed to take effect subject to certain conditions.

(2) (a) A deed shall be declared void where the court is satisfied that in the case of a deed –

- (i) there has been a material irregularity in obtaining approval of the deed of company arrangement;

- (ii) the deed does not comply with the requirements in section 223;
- (iii) there has been a material contravention of the deed by a person bound by it; or
- (iv) the deed should be declared void according to law.

(3) The court shall not grant permission for the proposed deed to take effect where the court is satisfied that, if it were to take effect it would not comply with the requirements in section 223.

(4) Any of the following persons may make an application to the court under subsection (1) :-

- (a) the administrator;
- (b) the deed administrator or a person to be appointed as a deed administrator;
- (c) a creditor;
- (d) any other person with an interest in the company; or
- (e) the Authority.

(5) An application for an order under paragraph (a) of subsection (1) shall be made within such period as may be prescribed.

(6) In making an order under paragraph (a) of subsection (1), declaring a deed of company arrangement void, the court shall specify in the order the consequences of such declaration.

CHAPTER 7

POWERS OF ADMINISTRATOR

232. (1) An administrator may do all such things as may be necessary or desirable for the administration of the affairs, business and property of the company.

Powers of
administrator

(2) An administrator shall have and may exercise the powers specified in the Seventh Schedule.

(3) In the performance or exercise of a power or function the administrator shall be the company's agent, and a person dealing with the administrator in good faith and for value shall not be required to inquire whether the administrator is acting within the administrator's powers.

233. (1) An administrator may by written notice –

Request by
administrator
for
cooperation

(a) subject to section 438, request a director or shareholder of the company or any other person to deliver to the administrator such books, records or documents of the company in that person's possession or custody or under that person's control relating to the administration as the administrator may determine; and

(b) request –

- (i) a person who has taken part in the formation, promotion or management of the company;
- (ii) a past or present shareholder of the company;
- (iii) a past or present director or other officer of the company;
- (iv) a past or present receiver of property or appointee in respect of property of the company;

- (v) a person who is or has been an employee of the company;
- (vi) subject to legal advice privilege or litigation privilege a person who is acting or has at any time acted as a lawyer for the company;
- (vii) an accountant or auditor of the company; or
- (viii) another person having knowledge of the affairs of the company,

to do such matters specified in subsection (2), if and to the extent reasonable.

(2) Every person referred to in subsection (1) shall –

- (a) attend on the administrator at such time and place as the administrator may request;
- (b) provide the administrator with such information about the affairs, business, property or financial circumstances of the company as the administrator may request;
- (c) be examined on oath by the administrator on any matter relating to the affairs, business, property or financial circumstances of the company, under such evidentiary and other procedural rules as may be prescribed; and
- (d) assist the administrator in the administration to the best of the person's ability.

(3) The administrator shall pay to a person referred to in paragraph (b) of subsection (1), not being an employee of the company, the reasonable travel and other expenses that are incurred in complying with a request made under paragraph (b) of subsection (1).

(4) No suit, prosecution or any other legal or other proceeding (including a disciplinary proceeding by any professional body or authority having jurisdiction in respect of professional conduct) shall lie against any person in respect of disclosure in good faith of information under this section.

(5) On the application of the administrator, the court may order a person who has failed to comply with a request made under this section to –

- (a) comply with the request; or
- (b) attend before the court and be examined on oath, under such evidentiary and other procedural rules as may be prescribed,

where the court is satisfied that such compliance or examination, as the case may be –

- (i) is necessary to further the achievement of the objective referred to in paragraph (d) of section 178; and
- (ii) would not be unreasonably oppressive to the person.

234. (1) An administrator may require a receivership or appointment of an appointee to end by giving written notice, in such form as may be prescribed, to the receiver or appointee, as the case may be.

Administrator's
notice that
receivership
or appointment
of appointee
shall end

(2) The receivership or appointment of the appointee, as the case may be, ends at the close of the next working day after the giving of notice under subsection (1).

(3) As soon as practicable after receiving a notice under subsection (1) and in any event by the end of the receivership or of the appointment of the appointee, the receiver or appointee, as the case may be, shall cease to deal with the property in receivership or in respect of which the appointee was appointed.

(4) After a receiver receives a notice under subsection (1) –

- (a) the receiver is not required to take any further steps under subsection (2) of section 382;
- (b) paragraph (b) of subsection (4) of section 385 or paragraph (b) of subsection (4) of section 386 as the case may be, ceases to apply, but any distribution already made thereunder shall not be disturbed on that ground; or
- (c) for the purposes of the Fourth Schedule the costs, charges and expenses properly incurred by and the remuneration of the receiver under this Act, and the receiver's indemnity under section 395, shall be treated as an expense of the administration.

Calls on
shares by
administrator

235. An administrator has the same powers as the directors of the company would have had, if the company were not in administration, to make calls on contributories in respect of uncalled capital and other liabilities and to charge interest on and demand payment of calls.

Execution of
documents by
administrator

236. (1) An administrator may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the administrator's powers.

(2) A document signed on behalf of a company by an administrator shall be deemed to have been properly entered into on behalf of the company for the purposes of section 19 of the Companies Act.

(3) Notwithstanding anything to the contrary in any other written law or in the articles of a company, an administrator may execute documents in the name and on behalf of the company by affixing the company's common seal to the documents and attesting the affixing of the common seal.

(4) A document executed in the manner described in subsection (3) shall be deemed to have been properly entered into by the company for the purposes of section 19 of the Companies Act.

237. (1) An administrator may dispose of or otherwise exercise the administrator's powers in relation to any property of the company that is subject to –

Power of
administrator
to deal with
property
subject to an
encumbrance

- (a) a floating charge; or
- (b) a fixed security ranking behind a floating charge under subsection (2) of section 431 of the Companies Act,

as if the property were not subject to that encumbrance.

(2) Where property is disposed of under subsection (1), the grantee of the encumbrance has the same priority in respect of any property of the company as the directors had directly or indirectly representing the property disposed of as the grantee had in respect of the property subject to the encumbrance.

(3) The administrator may apply to the court for an order permitting the disposal, with or without other property of –

- (a) any property of the company subject to an encumbrance to which subsection (1) shall not apply to; or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(4) On an application under subsection (3), the court may by order authorise the administrator to, as the case may be –

- (a) dispose of the property as if it were not subject to the encumbrance; or

- (b) dispose of the goods as if all rights of the owner or lessor under the hire-purchase agreement were vested in the company,

where the court is satisfied that –

- (i) the disposal would be likely to further the achievement of the objective referred to in paragraph (d) of section 178; and
- (ii) in all the circumstances of the case, prejudice will be caused to those with an interest in the company other than the grantee of the encumbrance or the owner or lessor under the hire-purchase agreement, as the case may be, if the application is not granted, that outweighs the prejudice that will be caused to the grantee or owner, as the case may be, from the granting of the application.

(5) Without prejudice to subsection (7), it shall be a condition of an order under subsection (4) that in respect of –

- (a) the net proceeds of the disposal; and
- (b) where those proceeds are less than such amount as may be determined by the court to be the net proceeds that it would be reasonable to realise on an arm's-length sale of the property or goods in the administration, such money as may be required to make good the deficiency,

the grantee, owner or lessor as the case may be, shall have the same priority as the grantee, owner or lessor had in respect of the property or goods.

(6) Where a condition imposed under subsection (5) relates to a disposal of property subject to two or more

encumbrances, the condition shall preserve the respective priorities of the grantees.

(7) In making an order under subsection (4), the court may, as may be necessary –

(a) impose any term or condition; and

(b) make any other ancillary order.

(8) A copy of every order made under subsection (4) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

CHAPTER 8

DUTIES OF ADMINISTRATOR AND DEED ADMINISTRATOR

A - DUTY TO INVESTIGATE

238. As soon as practicable after the administration of a company commences, an administrator shall –

Duty of
administrator
to investigate
company's
affairs

(a) investigate the company's affairs;

(b) consider whether the company may have been a party to a voidable transaction or a transaction at an undervalue, and determine in respect of possible voidable transactions and transactions at an undervalue whether or not it would be in the creditors' interests –

(i) to carry out investigations in relation to them; and

- (ii) to apply to the court under section 415 and to seek recovery under section 418; and
- (c) form an opinion as to whether it would be in the creditors' interests for –
 - (i) the company to make a deed of company arrangement;
 - (ii) a liquidator to be appointed; or
 - (iii) the administration to end otherwise.

B- DUTIES TO REPORT

Duty of
administrator
to report
misfeasance

239. (1) Where an administrator believes, or has reasonable grounds to believe, that an involved party has misapplied or retained or become liable or accountable for money or other property of the company, or been found guilty of negligence, default or breach of duty or trust in relation to the company, the administrator shall as soon as practicable report the matter to the Registrar and Authority.

(2) In any case where an administrator makes a report under subsection (1), the administrator shall give to the Registrar and Authority such assistance as the Registrar or Authority, as the case may be, may reasonably request by way of –

- (a) provision of information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(3) An administrator who fails to comply with subsection (1) or subsection (2) commits an offence.

240. (1) Where an administrator believes, or has reasonable grounds to believe, that the company or any involved party has committed an offence under –

Duty of
administrator
to report
offence
committed

- (a) this Act;
- (b) the Companies Act; or
- (c) the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021,

the administrator shall, as soon as practicable report the matter to the Registrar and Authority.

(2) The Registrar and Authority shall refer a matter reported under subsection (1) to the appropriate law enforcement authority.

(3) In any case where an administrator makes a report on a matter under subsection (1) that is reported to a law enforcement authority under subsection (2), the administrator shall give to the authority such assistance as the authority may require by way of –

- (a) provision of information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(4) Nothing in this section shall –

- (a) impose any duty on an administrator to investigate whether any offence of a kind referred to in subsection (1) has been committed; or
- (b) affect or limit any duty imposed on an administrator under any other enactment.

(5) An administrator who fails to comply with subsection (1) or subsection (3) commits an offence.

Duty of
administrator
to prepare
accounts

241. (1) An administrator or a person who was an administrator at the end of the administration, as the case may be, shall prepare an account for each of the following periods :—

- (a) the period of six months or a lesser period as the administrator may determine, immediately after the appointment of the administrator;
- (b) each subsequent period of six months during which the administrator holds office; and
- (c) the period between the last period of the kind referred to in paragraph (b) of subsection (1) and the day on which the administrator vacates office.

(2) Within twenty working days after the end of the period in question referred to in subsection (1), the person shall –

- (a) in such manner as may be prescribed, send to each known creditor and shareholder the account referred to in subsection (1); and
- (b) send a copy of the account to the Registrar and Authority.

(3) The account referred to in subsection (1) shall be in such form as may be prescribed and shall –

- (a) show, for each period, the administrator's receipts and payments;
- (b) show, for each period except the first, the aggregate of the administrator's receipts and payments since the day on which the administrator was appointed; and
- (c) except in the case of the account referred to in paragraph (c) of subsection (1), contain an updated interests statement, signed by the administrator, that complies with section 30.

(4) Every person who fails to comply with this section commits an offence.

(5) This section shall, if prescribed, apply to deed administrators with the necessary modifications.

242. (1) This section applies to a person who was an administrator at the end of an administration.

Duty of
administrator
to send final
report

(2) As soon as practicable after performing all of the person's other duties in relation to the administration, and in any event within twenty working days after the end of the administration, the person shall send to the Registrar and Authority a final report containing such information as may be prescribed, in such manner as may be prescribed.

(3) Every person who fails to comply with this section commits an offence.

243. (1) This section applies to a person who was a deed administrator at the end of a deed administration.

Duty of deed
administrator
to send final
report

(2) As soon as practicable after performing all of the person's other duties in relation to the deed administration, and in any event within twenty working days after the end of the deed administration, the person shall send to the Registrar and Authority a final report containing such information as may be prescribed, in such manner as may be prescribed.

(3) Every person who fails to comply with this section commits an offence.

C - MISCELLANEOUS DUTIES

244. (1) Subject to subsections (2) and (3), and to any order that the court may make, an administrator shall forthwith pay all money received by the administrator into an account or accounts established for the purpose at one or more banks.

Duty of
administrator
in relation to
money

(2) An administrator shall not pay any money received, into a personal bank account of the administrator.

(3) An administrator may invest money received in the course of the administration in financial products, to such extent, if any, and subject to such terms and conditions, as may be prescribed.

(4) An administrator who fails to comply with this section commits an offence and shall be liable on conviction to a fine not less than one million rupees and not exceeding two million five hundred thousand rupees or to rigorous imprisonment for a term not exceeding five years or to both such a fine and imprisonment.

(5) Where an administrator commits an offence in relation to subsection (2), in addition to any fine or imprisonment that may be imposed, the court shall levy the money paid in contravention of subsection (2) together with any interest or profits earned thereon, which shall –

(a) be recovered in the same manner as a fine; and

(b) unless the court orders otherwise, be paid into an account established under subsection (1).

Duty of
administrator
and deed
administrator
in relation to
accounting
records

245. (1) An administrator or a deed administrator shall make accounting records that correctly record and explain, in relation to the period of the administration or in relation to the period of the deed administration, as the case may be, of all receipts, payments and other transactions relating to the property and undertaking of the company.

(2) On an application to court by an interested person, the court may order that the applicant may inspect the accounting records referred to in subsection (1) on such terms and conditions as necessary.

(3) The accounting records referred to in subsection (1) shall be retained by the administrator or deed administrator, as the case may be, for at least six years after the administration or deed administration, as the case may be, ends.

(4) An administrator or deed administrator who fails to comply with this section commits an offence.

CHAPTER 9

REMUNERATION OF ADMINISTRATOR AND DEED ADMINISTRATOR AND APPROVAL OF PRE- ADMINISTRATION COSTS

246. (1) Subject to paragraph (a) of subsection (1) of section 262, an administrator shall be entitled to receive remuneration on one or more bases and at one or more hourly and percentage rates and fixed levels –

Remuneration
of
administrator
and deed
administrator

- (a) as may be agreed by the creditors, in such manner as may be prescribed; or
- (b) as may be determined by the court, in the absence of agreement by the creditors under paragraph (a).

(2) Subject to paragraph (a) of subsection (1) of section 262, a deed administrator shall be entitled to receive remuneration on one or more bases and at one or more hourly and percentage rates and fixed levels –

- (a) as may be agreed by the creditors, in such manner as may be prescribed; or
- (b) as may be determined by the court, in the absence of agreement by the creditors under paragraph (a).

(3) An administrator or deed administrator, as the case may be, shall, in addition to remuneration, be entitled to the reasonable costs of storage of such records as are required under subsection (3) of section 245 to be retained.

Approval of
pre-
administration
Costs

247. An administrator shall be entitled to receive payment of pre-administration costs -

- (a) as may be agreed by the creditors, in such manner as may be prescribed; or
- (b) as may be determined by the court, in the absence of agreement by the creditors under paragraph (a).

CHAPTER 10

LIABILITY OF ADMINISTRATOR AND DEED ADMINISTRATOR

Administrator's
indemnity

248.(1) An administrator shall have an indemnity out of the company's property, in respect of –

- (a) the administrator's liability under sections 249 and 250;
- (b) liability of the administrator otherwise properly incurred in the exercise, performance and discharge of the administrator's powers, duties and functions; and
- (c) the remuneration of the administrator under section 246 (1).

(2) In a liquidation of the company, an administrator's indemnity under subsection (1) has the priority accorded to the costs, charges and expenses properly incurred by and the remuneration of the administrator under sub-paragraphs (b) and (c) of paragraph 1 of the Fourth Schedule with respect to the corresponding elements of those sub-paragraphs.

(3) An administrator shall have a lien on the company's property to secure the indemnity under subsection (1).

(4) A lien under subsection (3) has priority over an encumbrance to the extent that the indemnity under subsection (1) has priority over debts, liabilities and other obligations secured by the encumbrance.

249. (1) An administrator shall not be liable for payment in relation to a contract of employment entered into before the administrator's appointment, unless –

Liability of
administrator
under
pre-existing
employment
contracts

- (a) administrator expressly adopts the contract in writing; or
- (b) subsection (2) applies.

(2) An administrator shall be liable for payment in relation to a contract of employment entered into from the date of the administrator's appointment, of such sums that has accrued for payment from the date of appointment of the administrator, in respect of –

- (a) wages or salary;
- (b) advance personal income tax;
- (c) provident fund dues;
- (d) statutory gratuity; and
- (e) employees trust fund dues,

the administrator shall make payments that has, accrued from the date of appointment of the administrator, up to the earliest of –

- (i) the end of the administration;
- (ii) the date on which the administrator ceases to be an administrator; and
- (iii) the date of termination of the contract,

if the administrator gives notice of termination of the contract, in accordance with the law applicable for termination of employment, within ten working days after the appointment, the end of the administration or the date on which the administrator ceases to be an administrator, whichever is earliest.

(3) Where the administrator does not give notice of termination of the contract, in accordance with the law applicable to termination of employment, within ten working days after the appointment.

(4) The court may, on the application of an administrator, if made before the end of the period of ten working days extend that period on such terms and conditions as may be necessary.

Liability of
administrator
on other
agreements
and for rent

250. (1) An administrator shall be liable on an agreement entered into by the administrator in the performance and exercise of any of the administrator's functions and powers.

(2) Subsection (1) has effect notwithstanding any agreement to the contrary, but without prejudice to the administrator's rights against the company or any other person.

(3) Subject to subsections (4) and (5), an administrator shall be liable for rent and any other payments becoming due under an agreement subsisting at the date of the administrator's appointment relating to the use, occupation or possession of property by the company.

(4) The liability of an administrator under subsection (3) shall be limited to that portion of the rent or other payments that is attributable to the period commencing ten working days after the appointment of the administrator, and ending on the earliest of –

- (a) the end of the administration;
- (b) the day on which the administrator ceases to be an administrator; and
- (c) the day on which the company ceases to use, occupy or possess the property.

(5) On the application of the administrator, the court may –

- (a) limit the liability of the administrator to a greater extent than that specified in subsection (4); or
- (b) exempt the administrator from liability under subsection (3) altogether.

(6) Nothing in subsection (3) or (4) shall –

- (a) be taken as giving rise to an adoption by an administrator of an agreement referred to in subsection (3); or
- (b) render an administrator liable in respect of the non-performance of any other obligation under such an agreement.

251. (1) The court may relieve a person who has acted as an administrator or deed administrator from liability incurred in the course of the administration or deed administration, as the case may be where the court is satisfied that –

Relief from liability in the event of a defect

- (a) the liability was incurred solely by reason of a defect in the order or resolution appointing the administrator or deed administrator, as the case may be; and
- (b) the administrator or deed administrator, as the case may be, acted honestly and reasonably and

should in the circumstances be exempted from liability.

- (2) The court may exercise its powers under subsection (1) subject to such terms and conditions as necessary.

CHAPTER 11

ADMINISTRATION AND DEED ADMINISTRATION - MISCELLANEOUS

252. (1) A payment made, transaction entered into or any other thing done, in good faith by or with the consent of the administrator of a company in administration, shall not be set aside in a liquidation of the company.

(2) Sections 412 , 413, 414, 415, 416, 417 and 418 shall not apply to a transaction by a company in administration or deed administration if the transaction is –

- (a) carried out by or with the authority of the administrator or deed administrator; or
- (b) authorised or permitted by the deed of company arrangement and carried out by the deed administrator.

Vacancy
in office of
administrator
or deed
administrator

253. (1) The office of administrator or deed administrator shall become vacant if the person holding that office –

- (a) resigns office under subsection (2) or (3);
- (b) dies;
- (c) is removed from office by the court;
- (d) in the case of an Insolvency Practitioner, has its registration as an Insolvency Practitioner suspended or cancelled;

- (e) in the case of an administrator, sends a final report under section 242;
- (f) in the case of an administrator, is removed from office by the creditors under section 254;
- (g) in the case of a deed administrator, sends a final report under section 243; or
- (h) in the case of a deed administrator, is removed from office by the creditors or company under the terms of the deed of company arrangement.

10 (2) An administrator may resign from office by giving five working days written notice in such manner as may be prescribed, of the administrator's intention to resign, to –

- (a) the administrator's appointer and, where the appointer was the court, the person on whose application the appointment was made; and
- (b) the creditors.

(3) A deed administrator may resign office by giving five working days written notice in such manner as may be prescribed, of the deed administrator's intention to resign, to –

- (a) the company; and
- (b) the creditors.

(4) The appointer of an administrator may appoint a replacement administrator to fill a vacancy in the office of administrator, subject to –

- (a) any order of the court; and
- (b) the requirements under this Part applicable to the appointment of an administrator.

(5) On the application of a person referred to in subsection (6), the court may make an order –

(a) where for any reason the office of administrator is vacant –

(i) appointing a suitable replacement administrator; or

(ii) specifying a process for the appointment of a suitable replacement administrator;

(b) where a deed of company arrangement is in force, and as necessary –

(i) either appointing a suitable replacement deed administrator or specifying a process for the appointment of a suitable replacement deed administrator; and

(ii) removing a deed administrator upon appointment of the replacement deed administrator.

(6) Any of the following persons may make an application to the court under subsection (5) –

(a) a creditor;

(b) any other person with an interest in the company;

(c) the Registrar; or

(d) the Authority.

(7) Where a vacancy occurs in the office of administrator or deed administrator other than under paragraph (e) or (g) of subsection (1), written notice of the vacancy shall be given, as soon as practicable, to the Registrar and Authority by the person vacating office or, if that person is unable to act, by the person's legal representative.

(8) A person vacating the office of administrator or deed administrator other than under paragraph (e) or (g) of subsection (1) shall, where practicable, provide such information and give such assistance to the person's successor as the successor may reasonably request.

(9) On the application of a person appointed to fill a vacancy in the office of administrator or deed administrator, the court may make any order that it considers necessary to facilitate the performance, exercise and discharge of the functions, powers and duties of the administrator or deed administrator, as the case may be.

(10) Every person who fails to comply with either of subsections (7) or (8) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

(11) Every person who fails to comply with any court order made in terms of subsection (9) commits an offence under this subsection and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand rupees .

254. (1) Subject to subsection (2) and to the applicable provisions of this Act, an administrator may be removed from office by a resolution of creditors adopted at –

Removal of
administrator
from office by
creditors

- (a) an initial meeting or a combined initial and outcome meeting; or
- (b) a meeting of creditors convened under section 255.

(2) An administrator may not be removed by a resolution of creditors unless –

- (a) the creditors, by resolution, appoint as replacement administrator another person, where the appointment of that other person –

- (i) takes effect upon the removal; and
 - (ii) is not in contravention of section 181; and
- (b) that other person has tabled at a meeting referred to in paragraph (a) or (b) of subsection (1) –
- (i) the written certification specified in paragraph (c) of subsection (1) of section 181;
 - (ii) the written consent specified in paragraph (d) of subsection (1) of section 181; and
 - (iii) an interests statement, signed by the person, that complies with section 30.

Replacement
administrator

255. (1) A replacement administrator, unless appointed by the creditors under paragraph (a) of subsection (2) of section 254 by the court, shall within ten working days after the appointment hold a meeting of creditors at which the creditors may –

- (a) vote to remove the replacement administrator; and
- (b) appoint another person in the place of the replacement administrator.

(2) At least seven working days before the meeting referred to in subsection (1), the replacement administrator shall –

- (a) convene the meeting by –
 - (i) giving written notice of the meeting to as many of the company's creditors as is reasonably practicable; and
 - (ii) giving public notice of the meeting; and

- (b) send a copy of the notice referred to in sub-paragraph (i) of paragraph (a) of subsection (2) to the Registrar and Authority.

(3) The replacement administrator shall table at the meeting referred to in subsection (1) an interests statement, signed by the replacement administrator, that complies with section 30.

(4) The Fifth Schedule shall apply to a meeting referred to in subsection (1).

(5) Every person who fails to comply with this section commits an offence.

256. (1) A deed administrator may be removed from office by the creditors or company under the terms of the deed of company arrangement, where they so provide.

Removal and
replacement
of deed
administrator

(2) A replacement deed administrator may be appointed under the terms of the deed of company arrangement, where they so provide.

257. An administrator who is appointed under subsection (1) of section 188 to a company in liquidation or provisional liquidation may apply to the court for an order for the liquidation or provisional liquidation, as the case may be, to resume.

Order for
liquidation or
provisional
liquidation to
resume

258. (1) Where a person ceases to be an administrator or deed administrator, the person shall be released where –

Release of
administrator
or deed
administrator

- (a) (i) notice has been given to each known creditor, in such manner and enclosing such documents as may be prescribed, of the release sought and explaining how creditors may object to it; and

- (ii) the creditors do not object in such manner and within such period as may be prescribed; or

- (b) after such procedure as may be prescribed has been followed, the court grants permission.

(2) A release under subsection (1) shall discharge the person from all liability, except liability under section 419, in respect of any act, omission or decision of the person in the administration or deed administration, as the case may be, of the company.

(3) Where a person has obtained a release under subsection (1), the person shall give written notice of the release to the Authority within ten working days.

Documents to
refer to deed
administration

259. (1) For so long as a company is in deed administration, the deed administrator shall ensure that –

- (a) every document issued or signed by or on behalf of the company shall have the words “subject to deed of company arrangement” after the name of the company where it first appears; and
- (b) if the company has one or more websites, each page of each website shall state prominently that a deed of company arrangement is in force.

(2) On an application by the company or the deed administrator, the court may exempt the deed administrator from the requirements in subsection (1) where it considers that proceeding with the purposes of the deed will be materially adversely affected if the application is not granted.

(3) A failure to comply with subsection (1) shall not affect the validity of –

- (a) a person’s appointment as deed administrator; or
- (b) any document.

(4) Every person who fails to comply with subsection (1) commits an offence.

260. A deed administration ends on the day on which, and at the time at which, the deed of company arrangement terminates.

When deed
administration
ends

CHAPTER 12

POWERS OF THE COURT IN ADMINISTRATION AND DEED ADMINISTRATION

261. (1) On the application of an administrator or deed administrator or the Authority, the court may –

Application
for directions
by an
administrator
or deed
administrator

(a) give directions in relation to any matter arising in connection with the performance, exercise and discharge of any of the functions, powers and duties of the administrator or deed administrator, as the case may be;

(b) revoke or vary any such directions.

(2) The powers conferred under subsection (1) –

(a) are in addition to any other powers the court may exercise; and

(b) may be exercised whether or not the administrator or deed administrator, as the case may be, has ceased to act as such when the application is made.

(3) It is a defence to a claim against an administrator or deed administrator, in relation to any act, omission or decision of the administrator or deed administrator, as the case may be, that the administrator or deed administrator, as the case may be, acted in compliance with a direction given under subsection (1).

Order
regarding
remuneration
or
appointment
of
administrator
or deed
administrator

262. (1) On the application of a person referred to in subsection (2), the court may –

- (a) in respect of any period or activity for which the remuneration of an administrator or deed administrator has not been determined under subsection (1) or (2), as the case may be, of section 246, fix such remuneration at a level that is reasonable in the circumstances;
- (b) declare whether or not an administrator or deed administrator was validly appointed.

(2) Any of the following persons may make an application to the court under subsection (1) –

- (a) the administrator or a person to be appointed as administrator;
- (b) the deed administrator or a person to be appointed as deed administrator;
- (c) a liquidator or provisional liquidator;
- (d) a receiver;
- (e) a creditor;
- (f) any other person with an interest in the company;
- (g) with respect to paragraph (b) of subsection (1), the Registrar; or
- (h) the Authority.

(3) The powers conferred under subsection (1) may be exercised whether or not the administrator or deed administrator has ceased to act as such when the application is made.

263. (1) On the application of a person referred to in subsection (2), the court may make any order that it considers necessary regarding the manner in which the provisions of this Part are to be applied in relation to a particular company.

Court's
general
power in
administration
and deed
administration

(2) Any of the following persons may make an application to the court under subsection (1) –

- (a) the administrator or a person to be appointed as administrator;
- (b) the deed administrator or a person to be appointed as deed administrator;
- (c) a liquidator or provisional liquidator;
- (d) a receiver;
- (e) a creditor;
- (f) with the permission of the court, any other person with an interest in the company;
- (g) the Registrar;
- (h) the Authority; or
- (i) with the permission of the court, any other interested person.

(3) In an order under subsection (1), the court may end an administration where it is satisfied that the administration shall be required to end as –

- (a) the provisions of this Part have been materially or adversely being dealt with; or
- (b) for some other reason, it is just and equitable that the administration end.

(4) A copy of every order made under subsection (3) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

(5) In making an order under subsection (1), the court may, where necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

Order to enforce
administrator's
or deed
administrator's
duties

264. (1) In this section, “failure to comply”, with respect to an administrator or deed administrator, means a failure (by act or omission) by the administrator or deed administrator, as the case may be, to comply with a duty arising –

- (a) under this Act or any other written law; or
- (b) under any order or direction of the court, except an order to comply made under this section,

and “comply” shall have the corresponding meaning.

(2) On the application of a person referred to in subsection (3), and where the court is satisfied that there is or has been a failure to comply, the court may –

- (a) without prejudice to any other right or remedy that may be available in relation to a breach of duty, order the administrator or deed administrator, as the case may be, to comply with the applicable duty so far as may be specified in the order; or
- (b) relieve the administrator or deed administrator, as the case may be, of the duty to comply with the applicable duty, wholly or in part.

(3) Any of the following persons may make an application to the court under subsection (2) –

- (a) a receiver;
- (b) a creditor;

- (c) any other person with an interest in the company;
- (d) a liquidator or provisional liquidator;
- (e) the Registrar; or
- (f) the Authority.

(4) No application may be made under subsection (2) unless notice of the failure to comply has been served on the administrator or deed administrator, as the case may be, at least ten working days before the application and there is a continuing failure to comply as at the date of the application.

(5) A copy of every order made under paragraph (a) of subsection (2) shall, within five working days after the making of the order, be sent by the court to the Authority.

265. (1) On the application of a person referred to in subsection (3) of section 264 and where the court is satisfied –

Removal of
administrator
or deed
administrator

- (a) that an administrator or deed administrator has failed to comply with an order made under paragraph (a) of subsection (2) of Section 264;
- (b) that an administrator has ceased to be permitted under section 181 to be appointed or act as administrator; or
- (c) that a deed administrator has ceased to be permitted under section 226 to be appointed or act as deed administrator,

the court may make an order removing the administrator or deed administrator, as the case may be, from office and make any other ancillary order as may be necessary.

(2) A copy of every order made under subsection (1) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

Orders
protecting
business or
property

266. The court may, in making an order that removes or has the effect of removing an administrator or deed administrator from office, make such orders as necessary –

- (a) for preserving the business or property of the company; and
- (b) for that purpose, requiring the person removed from office –
 - (i) to deliver to such person as may be specified in the order such documents in the possession or custody or under the control of the administrator or deed administrator, as the case may be, as may be specified in the order; and
 - (ii) to take such other action as may be necessary.

Protection of
interests of
creditors and
shareholders

267. (1) At any time during an administration or deed administration, but subject to subsection (3), a creditor or shareholder of a company or the Authority may apply to the court for an order under this section on the ground that –

- (a) the company's affairs, business or property are being or have been administered by the administrator or deed administrator in a manner that is unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors and shareholders; or
- (b) any actual or proposed act or omission of the administrator or deed administrator is or would be unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors and shareholders.

(2) On an application under this section, the court may, where it considers it just and equitable to do so and subject to subsection (3), make such order as may be necessary, including an order –

- (a) regulating the future administration by the administrator or deed administrator of the company’s affairs, business and property; or
- (b) requiring the administrator or deed administrator to refrain from either doing or continuing an act complained of by the applicant or to do an act that the applicant complains that the administrator or deed administrator, as the case may be, has omitted to do.

(3) Any complaint as to the terms of –

- (a) a deed of company arrangement (actual or proposed) under Chapter 6 of Part IX; or
- (b) a compromise (actual or proposed) under Part X,

shall not be made under this section, but may be made under other provisions of this Act where permitted by those provisions.

268. While a company is in administration, on the application of the Registrar or the Authority, the court may make any order as necessary to protect the interests of the creditors as a whole.

Order to
protect
creditors in
administration

PART X

Compromises

269. In this Part, unless the context otherwise requires –

Interpretation

“compromise” means, a compromise between a company and its creditors, or any class of them, including a compromise –

- (a) cancelling all or part of any debts or other liabilities of the company;
- (b) varying the rights of creditors or the terms of any debts or other liabilities of the company; or
- (c) relating to an alteration of a company's articles that affects the likelihood of the company's ability to pay its debts; and

“proponent” means a person referred to in section 270 who proposes a compromise in accordance with this Part.

Compromise
proposal

270. (1) Any of the following persons may propose a compromise under this Part, if that person has reason to believe that a company is or is likely to become insolvent –

- (a) the board of the company by resolution;
- (b) a receiver who is appointed in respect of the whole, or substantially the whole, of the property and undertaking of the company;
- (c) an administrator of the company;
- (d) a liquidator of the company; or
- (e) with the permission of the court, a creditor of the company, a receiver appointed by a creditor of the company or a shareholder of the company.

(2) Where the court grants permission to a creditor, receiver or shareholder under paragraph (e) of subsection (1), the court may make an order directing the company to send to the creditor, receiver or shareholder, within such period as may be specified in the order, a list of the names and addresses of the company's creditors, setting out the amount or estimated amount of the company's debt or liability to each creditor and such other information as may

be specified in the order, to enable the creditor, receiver or shareholder to propose a compromise.

(3) A compromise shall be proposed to each class of creditors in a separate meeting convened by the proponent.

(4) For the purposes of subsection (3) –

- (a) the proponent shall constitute creditor classes in such a way that creditors whose interests are so dissimilar that they cannot sensibly consult together with a view to acting in their common interest are in different classes; and
- (b) if the members of a class of creditors do not have a genuine economic interest in the company, a meeting of that class does not need to be convened.

(5) On the application of the proponent or the company, and at any time before a meeting is convened under subsection (3), the court may give directions in relation to any of the matters referred to in subsection (4).

(6) On the application of the proponent or the company, and at any time before a compromise is approved by creditors, or a class of creditors, under section 272, the court may give directions in relation to any matter that would or might be relevant if an application was to be made under subsection (2) of section 274.

(7) Without prejudice to subsection (5), subsection (6) shall not apply to the matters referred to in subsection (4).

(8) In view of the importance to the company's position of the subject matter of subsections (5) and (6), a determination on an application under either of those subsections shall be made as expeditiously as possible.

Notice of
proposed
compromise

271. (1) The proponent shall compile a list of creditors known to the proponent who would be entitled to attend each meeting that is to be convened under subsection (3) of section 270, setting out the amount or estimated amount of the company's debt or liability to each creditor.

(2) The proponent shall, in such manner as may be prescribed, give –

- (a) each known creditor of the company;
- (b) the company;
- (c) any receiver;
- (d) any administrator;
- (e) any liquidator; and
- (f) the Registrar,

written notice, in accordance with the Fifth Schedule, of the intention to hold a meeting of the creditors or any class of creditors, or meetings of classes of creditors, for the purpose of voting on the resolution, at least twenty working days before the meeting or meetings, as the case may be.

(3) The proponent shall enclose the following documents with a notice under subsection (2) –

- (a) a statement by the proponent –
 - (i) containing the name and address of the proponent and the capacity in which the proponent is acting;
 - (ii) containing the address and telephone number to which inquiries may be directed during normal working hours;
 - (iii) setting out the terms of the proposed compromise and the reasons for it;

- (iv) explaining the effect of approval of the proposed compromise, and in particular its commercial impact;
 - (v) stating any material interests of a director or other officer of the company in the proposed compromise (whether as director or other officer or otherwise) and the effect on those interests of the proposed compromise insofar as it differs from the effect on the like interests of other persons;
 - (vi) explaining that the proposed compromise will be binding on all creditors or on all creditors of that class, if approved in accordance with section 272;
 - (vii) containing details of the company's alternatives if the proposed compromise is not approved;
 - (viii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
 - (ix) containing such other information as may be prescribed;
- (b) where a meeting of a class of creditors is not to be convened, on the ground that the members of that class do not have a genuine economic interest in the company, as referred to in paragraph (b) of subsection (4) of section 270, a statement by the proponent –
- (i) describing the relative ranking of the company's debts or other liabilities to the

members of that class of creditors, with respect to the company's debts or other liabilities to the members of each other class of creditors; and

- (ii) stating that the members of that class do not have a genuine economic interest in the company and that, accordingly, a meeting of that class is not to be convened; and
- (c) a copy of the list or lists of creditors referred to in subsection (1).

Effect of
compromise

272. (1) A compromise is approved by the creditors or a class of creditors where at a meeting of the creditors or that class of creditors convened and held in accordance with the Fifth Schedule, the compromise is approved by a resolution adopted in accordance with that Schedule.

(2) A compromise approved by the creditors or a class of creditors of a company, and by either the company, the liquidator (if the company is in liquidation), or an administrator (if the company is in administration), in accordance with this Part is binding on –

- (a) the company; and
- (b) all creditors or all creditors of that class, as the case may be.

(3) On an application to the court by a person referred to in subsection (1) of section 270, the court may order that a compromise, if approved, shall release from liability one or more persons, including related companies and directors of the company, that are sufficiently connected with the compromise.

(4) In deciding whether or not a person is sufficiently connected with the compromise for the purposes of subsection (3), the court shall have regard to –

- (a) whether or not the proposed release is an integral part of the compromise;
- (b) whether or not the person is contributing under the compromise; and
- (c) whether or not, in the absence of a release, the person would have an indemnity claim against the company if called on.

(5) Where a resolution proposing a compromise is put to the vote of more than one class of creditors, it shall be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise is conditional on the approval of the compromise by every other class voting on the resolution.

(6) The proponent shall, in such manner and within such period as may be prescribed, give written notice of the numerical results of the voting to –

- (a) each known creditor;
- (b) the company;
- (c) any receiver;
- (d) any administrator;
- (e) any liquidator; and
- (f) the Registrar.

(7) An approved compromise becomes effective upon the giving of notice to the Registrar in accordance with subsection (6).

273. (1) A compromise approved under section 272 may be varied – Variation of compromise

- (a) in accordance with any procedure for variation incorporated in the compromise as approved; or

- (b) by the approval of a variation of the compromise in accordance with the requirements provided for in this Part which, for that purpose, shall apply with such modifications as may be necessary, as if any proposed variation were a proposed compromise.

(2) This Part shall apply to any compromise that is varied in accordance with this section.

Powers of
court in
relation to
compromises

274. (1) On the application of the proponent or the company, the court may –

- (a) give directions in relation to a procedural requirement under this Part or waive or vary any such requirement, where the court is satisfied that it would be just to do so; or
- (b) where the court is satisfied that there is sufficient support from the creditors for approval of a compromise that has been proposed, order that during such time as may be specified in the order, beginning not earlier than the day on which notice was given of the proposed compromise and ending not later than twenty working days after the day on which notice is given of the result of the voting on it –
 - (i) proceedings in relation to a debt owing by the company be stayed or restrained; and
 - (ii) a creditor refrain from taking any other measure to enforce satisfaction of a debt owing by the company, including enforcing an encumbrance or taking possession of or otherwise recovering property,

except with the permission of the court.

(2) Where the court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise, that –

- (a) insufficient notice of the meeting was given to that creditor, or there was a failure to comply with subsection (3) of section 271 with respect to that creditor;
- (b) there was some other material irregularity in obtaining approval of the compromise; or
- (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to, or unfairly discriminatory against, that creditor or the class of creditors to which that creditor belongs,

the court may order that such creditor is not bound by the compromise, or make such other order as may be necessary.

(3) An application under subsection (2) shall be made within such period as may be prescribed.

275. Unless the court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise –

Costs of
compromise

- (a) shall be met by the company;
- (b) if incurred by a liquidator, shall be deemed to be an expense of the liquidation;
- (c) if incurred by an administrator, shall be deemed to be an expense of the administration; or
- (d) if incurred by any other person, shall be deemed to be a debt owing to that person from the company and, in a liquidation, are payable in the order of priority specified in the Fourth Schedule.

PART XI**Micro Small Medium Enterprise (MSME) Company
Debt Restructuring Arrangements**

MSME
Company
Debt
Restructuring
Arrangements

276. (1) This Part establishes a MSME Company Debt Restructuring Arrangement procedure, under which a small company, with the assistance of a personal insolvency proposer or personal insolvency administrator, can negotiate a flexible repayment arrangement with its creditors, in satisfaction of the company's outstanding liabilities.

(2) The MSME Company Debt Restructuring Arrangement procedure aims to enable small companies to achieve economic rehabilitation, avoiding liquidation and the unnecessary expense and complexity of administration.

(3) The MSME Company Debt Restructuring Arrangement procedure aims to enable the rehabilitation and rescue of MSME companies through the restructuring of debts via negotiation between companies and creditors.

MSME
Company
Debt
Restructuring
Arrangements:
General
Conditions

277. (1) For the purposes of this Part, "MSME debtor" means a company that has total outstanding secured and unsecured debts that amount to no more than fifty million rupees at the time of the submission of a proposal to the Official Receiver under section 282.

(2) Subject to the provisions of this Act, a MSME debtor who satisfies the eligibility criteria specified in section 278 may make a proposal to creditors for an MSME Company Debt Restructuring Arrangement in respect of the payment, satisfaction or restructuring of the MSME debtor's debts.

(3) A proposal for an MSME Company Debt Restructuring Arrangement may be made and submitted by a MSME debtor, or on behalf of a MSME debtor by a personal insolvency proposer, in accordance with the provisions of this Part and any procedure as may be prescribed.

(4) A personal insolvency proposer may also act, after the coming into effect of an MSME Company Debt Restructuring Arrangement, as a personal insolvency administrator.

(5) Any rules may be made by the Authority regulating the performance of the functions of personal insolvency proposers and personal insolvency administrators under this Part.

(6) Two or more proposals for a MSME Company Debt Restructuring Arrangement, in respect of two or more MSME Companies, may be dealt with as one proposal where-

- (a) the personal insolvency proposer considers that they could reasonably be dealt with together because of the financial relationship of the MSME debtors involved; and
- (b) the terms of each of the proposals specify details of how the Arrangements should be administered together, including-
 - (i) the treatment of joint and individual assets and the treatment of joint and individual debts;
 - (ii) whether the approval of each of the Arrangements is to be contingent on the approval of another Arrangement;
 - (iii) the effect of the failure or early termination of one Arrangement on any other Arrangement; and
 - (iv) how any joint payments, made by two or more MSME debtors, should be apportioned between the creditors.

(7) A MSME Company Debt Restructuring Arrangement may authorise or require the personal insolvency administrator to -

- (a) carry on the MSME debtor's business, or trade on the MSME debtor's behalf or in the debtor's name;
- (b) realise the assets of the MSME debtor; or
- (c) collect, administer or dispose of any funds of the MSME debtor.

MSME
Company
Debt
Restructuring
Arrangements:
Eligibility
Criteria

278. A MSME debtor shall be eligible to enter into an MSME Company Debt Restructuring Arrangement when it meets all of the following criteria:-

- (a) the MSME debtor is unable, or is likely to be unable to pay some or all of its debts as they become due in the normal course of business, in accordance with section 409; and
- (b) the MSME debtor is not currently in liquidation proceedings.

MSME
Company
Debt
Restructuring
Arrangements:
Mandatory
Provisions

279. (1) A MSME Company Debt Restructuring Arrangement shall authorise a person, firm or body to act as a personal insolvency administrator in relation to the arrangement, in terms of section 294.

(2) A MSME Company Debt Restructuring Arrangement shall provide for the payment, before any other debts are paid, of the fees and expenses of the personal insolvency proposer and personal insolvency administrator, that are properly incurred in respect of the Arrangement.

(3) A MSME Company Debt Restructuring Arrangement shall not provide for a preferential claim to be paid otherwise than in priority to -

- (a) a preferential claim ranking behind that preferential claim; or
- (b) a claim that is not a preferential claim,

unless the holder of the preferential claim gives consent in writing to a different treatment of such claim.

(4) A MSME Company Debt Restructuring Arrangement shall provide that the circumstances of the MSME debtor be reviewed by the personal insolvency administrator at regular intervals, not exceeding intervals of six months.

280. (1) Without limiting the ability of the parties to agree on the terms of a MSME Company Debt Restructuring Arrangement other than under the provisions of this Part, an Arrangement may include terms providing for the payment, satisfaction or restructuring of both unsecured and secured debts and the rights of counterparties to hire-purchase agreements.

MSME
Company
Debt
Restructuring
Arrangements:
Secured
Creditors
and Property
Rights

(2) Subject to the rules on creditors' approval of a MSME debtor's proposal under section 284, a MSME Company Debt Restructuring Arrangement may include terms providing for the treatment of any property that is subject to a security or of a hire-purchase agreement, which may include-

- (a) the sale or disposition of the property;
- (b) the surrender of the property to the MSME debtor; or
- (c) the retention by the secured creditor or hire-purchase agreement counterparty of the property.

(3) Subject to the rules on creditors' approval of a MSME debtor's proposal under section 284, an MSME Company Debt Restructuring Arrangement may include terms -

- (a) modifying the rights of a secured creditor or hire-purchase agreement counterparty; or
- (b) providing that a secured creditor or hire-purchase agreement counterparty will not seize or realise its security or property while the arrangement is in force.

(4) Subject to the rules on creditors' approval of a MSME debtor's proposal under section 284, an MSME Company Debt Restructuring Arrangement may include terms providing for the reduction of the principal sum due in respect of a secured debt or hire-purchase agreement, only where the Arrangement specifies that the amount of the reduced principal sum is not less than the value of the security.

(5) Subject to the rules on creditors' approval of a MSME debtor's proposal under section 284, an MSME Company Debt Restructuring Arrangement may include terms providing for -

- (a) the curing, within a reasonable time, of any default; and
- (b) maintenance of payments while the Arrangement is in effect on any secured debt on which the last payment is due after the completion of the Arrangement.

(6) Subject to the rules on creditors' approval of a MSME debtor's proposal under section 284, an MSME Company Debt Restructuring Arrangement may include terms providing for the -

- (a) the curing, within a reasonable time, of any default; and
- (b) maintenance of rent payments while the Arrangement is in effect arising under a rental

agreement into which the MSME debtor has entered with a relevant creditor.

281. (1) Where a MSME debtor wishes to make a proposal for a MSME Company Debt Restructuring Arrangement, it must appoint a person, firm or body, to act as a personal insolvency proposer, in terms of section 293.

MSME
Company
Debt
Restructuring
Arrangements:
Appointment
of personal
insolvency
proposer

(2) If the MSME debtor and the personal insolvency proposer so agree, the person, firm or body appointed to act as a personal insolvency proposer may also act as a personal insolvency administrator in respect of the proposed MSME Company Debt Restructuring Arrangement.

(3) On being appointed under subsection (1), the personal insolvency proposer shall -

- (a) confirm in writing to the MSME debtor that the personal insolvency proposer has consented to act in the role of personal insolvency proposer in respect of the MSME debtor's MSME Company Debt Restructuring Arrangement proposal;
- (b) if the proposer consents to act as personal insolvency administrator on the coming into effect of the MSME Company Debt Restructuring Arrangement, confirm this consent in writing to the MSME debtor; and
- (c) notify the Official Receiver of its appointment to act as a personal insolvency proposer, and, where relevant, a personal insolvency administrator.

(4) A personal insolvency proposer who agrees to assist a MSME debtor in preparing a MSME Company Debt Restructuring Arrangement shall -

- (a) make such reasonable enquiries into the MSME debtor's property and financial affairs so as to

be able to assess with reasonable accuracy the MSME debtor's financial situation; and

- (b) prepare a MSME Company Debt Restructuring Arrangement in the manner specified by this Part, and in the form which may be prescribed.

(5) For the purpose of enabling the personal insolvency proposer to assist in the preparation of a proposal for a MSME Company Debt Restructuring Arrangement, the MSME debtor shall submit to the personal insolvency proposer a statement disclosing fully, to the best of the knowledge of the MSME's directors, all of the MSME debtor's financial affairs, in accordance with section 33.

(6) The rules, standards, practice directions, codes of conduct or guidelines may be made by the Authority regarding the functions of personal insolvency proposers in assisting a MSME debtor in the preparation and submission of a proposal for a MSME Company Debt Rehabilitation Order.

MSME
Company
Debt
Restructuring
Arrangements:
Preparation of
MSME Debtor
Proposal

282. (1) A MSME debtor who meets the criteria in section 278, may prepare, with the assistance of a personal insolvency proposer, a proposal for a MSME Company Debt Restructuring Arrangement.

(2) The form of a proposal for a MSME Company Debt Restructuring Arrangement may be prescribed.

(3) The proposal for a MSME Company Debt Restructuring Arrangement shall -

- (a) be signed by an authorised representative of the MSME debtor;
- (b) have endorsed on it the name of-

- (i) the person, firm or body who is acting as a personal insolvency proposer; and
- (ii) the person, firm or body who is willing to act as a personal insolvency administrator on the coming into effect of the MSME Company Debt Restructuring Arrangement.

(4) The proposal for a MSME Company Debt Restructuring Arrangement shall include a statement of the personal insolvency proposer confirming that it is of the opinion that -

- (a) the MSME debtor satisfies the eligibility requirements of section 278;
- (b) to the best of the personal insolvency proposer's knowledge, the information contained in the MSME debtor's statement of financial affairs is complete and accurate;
- (c) the proposal has a reasonable prospect of being approved and implemented; and
- (d) the proposal offers a reasonable means of facilitating the economic rehabilitation of the MSME debtor while allowing contributions to be made to the creditors from the MSME debtor's available property and income.

(5) The proposal for an MSME Company Debt Restructuring Arrangement shall include, in addition to such requirements as may be prescribed, a statement of the MSME debtor's financial affairs.

(6) The statement of the MSME debtor's financial affairs, as required by subsection (5), shall be in accordance with section 33.

(7) The proposal for an MSME Company Debt Restructuring Arrangement shall include a statement of the MSME debtor's consent to-

- (a) the Official Receiver making such enquiries as it considers necessary to determine whether the MSME debtor meets the eligibility criteria specified in section 278;
- (b) the postponement of the consideration of the MSME Company Debt Restructuring Arrangement proposal by the Official Receiver until the Official Receiver has received satisfactory answers to such enquiries;
- (c) the disclosure by the Official Receiver of data of the MSME debtor to creditors and other third parties to the extent necessary for the making and consideration of an MSME Company Debt Rehabilitation Arrangement; and
- (d) the disclosure to the Official Receiver, by creditors, government agencies, or any other relevant third parties, of data of the MSME debtor, to the extent necessary for the making and consideration of an MSME Company Debt Rehabilitation Arrangement.

(8) On the preparation by the MSME debtor, with the assistance of the personal insolvency proposer, of a proposal that satisfies the requirements of this section, the personal insolvency proposer shall submit the proposal to the Official Receiver.

MSME
Company
Debt
Restructuring
Arrangement:
Negotiation
Meeting

283. (1) After submitting the proposal to the Official Receiver under section 282, the personal insolvency proposer shall seek a decision from the MSME debtor's creditors as to whether they approve the proposal for a MSME Company Debt Restructuring Arrangement.

(2) The decision by the MSME debtor's creditors to approve or reject the proposal shall be made by an MSME Company Debt Restructuring Arrangement negotiation meeting.

(3) The personal insolvency proposer shall consider the convenience of creditors and the MSME debtor in fixing the date and venue for the negotiation meeting, which may take place in-person or via digital communication means.

(4) The personal insolvency proposer shall send to every known creditor -

- (a) notice of the negotiation meeting;
- (b) a copy of the proposal for an MSME Company Debt Restructuring Arrangement;
- (c) a creditor's claim form;
- (d) a postal vote form and electronic mail vote template;
- (e) a statement asking each creditor to decide whether it approves or rejects the proposed MSME Company Debt Restructuring Arrangement;
- (f) a statement of the date on which the negotiation meeting will be held, that date being at least twenty one days after the sending of the statement; and
- (g) a statement to the effect that a creditor who does not attend the negotiation meeting or does not cast a postal vote or electronic mail vote, shall be deemed to have accepted the proposal for an MSME Company Debt Restructuring Arrangement.

(5) A creditor who has submitted a creditor's claim form, in a manner satisfying such requirements as may be prescribed, may vote on the proposal by-

- (a) sending a postal vote that reaches the personal insolvency proposer before or at the negotiation meeting; or
- (b) sending an electronic mail vote that reaches the personal insolvency proposer before or at the negotiation meeting.

(6) If the personal insolvency proposer receives a postal vote or other communication of assent or dissent as prescribed, before or at the meeting, this vote or communication has effect as if the creditor had been present and voted at the meeting.

Creditor
Approval
of MSME
Company
Debt
Restructuring
Arrangement

284. (1) The personal insolvency proposer shall facilitate and chair the MSME Company Debt Restructuring Arrangement negotiation meeting.

(2) Subject to the provisions of this Part and any such rules, as may be prescribed, regarding the holding of a meeting referred to in this section the Fifth Schedule shall apply to the following matters :-

- (a) proxies;
- (b) chairperson;
- (c) quorum;
- (d) adjourned meetings; and
- (e) miscellaneous.

(3) At the negotiation meeting, the creditors may-

- (a) conduct such examination of officers of the MSME debtor as is reasonable to clarify the MSME debtor's financial circumstances;

- (b) adjourn the meeting for a maximum period of ten working days to allow further investigation of the MSME debtor's affairs, by passing a resolution of a majority of creditors in value;
- (c) accept the proposal, by passing a resolution, in accordance with subsection (4), (5) or (6) of section 282, that sets out the final terms of the MSME Company Debt Restructuring Arrangement;
- (d) with the consent of the MSME debtor, modify or amend the proposal, by passing a resolution, in accordance with subsection (4), (5) or (6) of section 282, that sets out the final terms of the MSME Company Debt Restructuring Arrangement;
- (e) appoint the personal insolvency proposer as personal insolvency administrator of the MSME Company Debt Restructuring Arrangement, or appoint another person, firm or body who is willing to act as personal insolvency administrator; and
- (f) with the consent of the MSME debtor, include such terms in the MSME Company Debt Restructuring Arrangement with respect to the supervision of the affairs of the debtor as they may deem advisable.

(4) Subject to subsections (5) and (6), a proposal shall be approved where the claims of those creditors voting in favour of the proposal represent a majority in value of two thirds of the claims of all creditors entitled to vote.

(5) Where the proposal includes terms modifying or limiting the rights of secured creditors, in a manner specified in section 280 or otherwise, the proposal is approved where

the claims of those secured creditors voting in favour of the proposal represent more than two thirds of the value of the claims of secured creditors entitled to vote.

(6) Where the proposal includes terms modifying or limiting the rights of creditors under hire-purchase agreements, finance leases or any similar agreement, in a manner specified in section 280 or otherwise, the proposal is approved where the claims of such creditors voting in favour of the proposal represent more than two thirds of the value of the claims of such creditors entitled to vote.

(7) Where the proposal does not include terms modifying or limiting the rights of a secured creditor or hire-purchase agreement counterparty, such secured creditor or hire-purchase agreement counterparty may not vote on the proposal, the relevant creditor may not vote on the proposal:

Provided however that, if the debtor has made a declaration under section 47A of the Mortgage Act (Chapter 89), such secured creditor may participate as an unsecured creditor to the extent of the unsecured portion of the debt.

(8) A creditor who does not -

- (a) attend the negotiation meeting;
- (b) cast a postal vote; or
- (c) cast an electronic mail vote,

shall be deemed to have voted in favour of the proposal for a MSME Company Debt Restructuring Arrangement.

(9) Where no creditor votes, the proposed Debt Restructuring Arrangement shall be deemed to have been approved under this section.

(10) For the avoidance of doubt, a creditor, having been given written notice in accordance with the provisions of this Part, who does not -

- (a) submit a creditor’s claim form under section 283;
- (b) attend the negotiation meeting under this section;
- (c) cast a postal vote under this section; or
- (d) cast an electronic mail vote under this section,

shall not be entitled to bring an application to object to a court order confirming the coming into effect of the Arrangement under section 288.

(11) Where the creditors at a negotiation meeting does not accept the proposal –

- (a) the personal insolvency proposer shall endorse the proposal “not accepted by creditors” and return it to the Official Receiver; and
- (b) the MSME Company Debt Restructuring Arrangement procedure shall terminate.

285. (1) After the proposal for a MSME Company Debt Restructuring Arrangement has been accepted by the creditors, the personal insolvency proposer shall, as soon as practicable, submit to the Official Receiver –

Submission of
an approved
MSME
Company
Debt
Restructuring
Arrangement
to the Official
Receiver

- (a) written notice of the result of the creditor vote at the MSME Company Debt Restructuring Arrangement negotiation meeting; and
- (b) the final terms of the MSME Company Debt Restructuring Arrangement.

(2) On receiving the documents set out in subsection (1), the Official Receiver shall confirm that the terms of the MSME Company Debt Restructuring Arrangement satisfy the provisions of this Part.

(3) On confirming that the terms of the MSME Company Debt Restructuring Arrangement satisfy the provisions of this Part, the Official Receiver shall issue a certificate recommending a MSME Company Debt Restructuring Arrangement.

(4) On issuing a certificate recommending a MSME Company Debt Restructuring Arrangement, the Official Receiver shall -

- (a) present this certificate, together with notice of the result of the creditor vote at the negotiation meeting and the final terms of the MSME Company Debt Restructuring Arrangement, to the appropriate court; and
- (b) notify the MSME debtor, the personal insolvency proposer and all creditors listed in the Arrangement, of the issuance of the certificate.

(5) The Official Receiver may only refuse to issue a certificate recommending a MSME Company Debt Restructuring Arrangement if -

- (a) the Arrangement does not satisfy the provisions of this Part;
- (b) the Official Receiver becomes aware of a material inaccuracy in the MSME debtor's statement of financial affairs or accompanying documents;
- (c) the Official Receiver becomes aware of a material change in the MSME debtor's circumstances that was not reasonably foreseeable in the MSME debtor's statement of financial affairs or accompanying documents; or
- (d) the Official Receiver is of the opinion that the terms of the MSME Company Debt Restructuring

Arrangement are not reasonable or are not fair to the MSME debtor and the creditors.

(6) If the Official Receiver refuses to issue a certificate recommending an MSME Company Debt Restructuring Arrangement, the Official Receiver shall-

- (a) provide reasons for this refusal to the MSME debtor, personal insolvency proposer and creditors of this refusal; and
- (b) notify the appropriate court of its recommendation that the court does not confirm the coming into effect of the MSME Company Debt Restructuring Arrangement.

286. (1) Where the court receives a recommendation from the Official Receiver with respect to a MSME Company Debt Restructuring Arrangement under section 285, the court shall consider the recommendation, together with any accompanying documentation.

Court
Confirmation
of MSME
Company
Debt
Restructuring
Arrangement

(2) When considering a recommendation under this section, the court shall be entitled to treat a certificate issued by the Official Receiver under section 285, as evidence of the matters certified therein.

(3) The court shall, when considering a recommendation under this section, hear any objection to the recommendation that is made by a creditor, the MSME debtor or the personal insolvency proposer.

(4) The court, where an objection has been made under subsection (3), or where it requires further information or evidence for the purpose of its arriving at a decision, may hold a hearing, notice shall be given to the Official Receiver, the personal insolvency proposer, the MSME debtor and the creditors of the said hearing.

(5) Having considered the recommendation, the court shall make an order confirming the coming into effect of the MSME Company Debt Restructuring Arrangement if it considers that-

- (a) the MSME Company Debt Restructuring Arrangement satisfies the criteria in this Part; and
- (b) the making of the MSME Company Debt Restructuring Arrangement has complied with the procedural requirements of this Part.

(6) On confirming the coming into effect of the MSME Company Debt Restructuring Arrangement, the court shall direct the Official Receiver to, in accordance with any manner as may be prescribed –

- (a) give public notice of the court order; and
- (b) send a copy of such notice to the Registrar and the Authority.

(7) On the making an order confirming the MSME Company Debt Restructuring Arrangement, the court shall direct the Official Receiver to give written notice to –

- (a) the MSME debtor, personal insolvency proposer and personal insolvency administrator of the issue of order and the coming into effect of the MSME Company Debt Restructuring Arrangement;
- (b) each creditor of the MSME debtor of the issue of the order and the coming into effect of the MSME Company Debt Restructuring Arrangement; and
- (c) each creditor of the rights of creditors to object to the MSME Company Debt Restructuring Arrangement under section 288.

287. (1) An MSME Company Debt Restructuring Arrangement that is approved by the court is binding on all the creditors who are affected by the terms of the Arrangement.

Effect of Court
Confirmation
of MSME
Company
Debt
Restructuring
Arrangement

(2) The court order confirming the coming into effect of the MSME Company Debt Restructuring Arrangement shall be conclusive as to the validity of the Arrangement.

(3) Following the court order confirming the coming into effect of the MSME Company Debt Restructuring Arrangement, the Arrangement shall remain in effect according to its terms until-

(a) it is completed in accordance with its terms and section 291; or

(b) it is terminated under section 290.

(4) While an MSME Company Debt Restructuring Arrangement is in effect, a creditor who holds a debt affected by the terms of the Arrangement-

(a) shall not take any actions to recover or enforce the debt; and

(b) in particular, shall not take any actions to –

(i) contact a MSME debtor regarding payment of an included debt, otherwise than at the request of the MSME debtor or the personal insolvency administrator, or in accordance with the terms of the Arrangement;

(ii) initiate or continue any legal proceedings against the MSME debtor in relation to an included debt;

- (iii) collect, secure, recover or demand payment of an included debt;
- (iv) subject to subsection (6), execute or enforce a judgment or order of a court or tribunal against the MSME debtor;
- (v) obtain a warrant;
- (vi) terminate, on the grounds of the MSME debtor's default or insolvency, any agreement for the provision of any essential goods or services;
- (vii) obtain possession of a premises which the MSME debtor is occupying under a rental agreement into which the MSME debtor has entered with the relevant creditor, otherwise than under the terms of the Arrangement;
- (viii) if the Arrangement so provides, take any of the actions in this subsection against another person who is jointly liable with the MSME debtor to whom the MSME Company Debt Restructuring Arrangement relates;
- (ix) if the Arrangement so provides, take any of the actions in this subsection against another person who has guaranteed the debts of the MSME debtor to whom the MSME Company Debt Restructuring Arrangement relates;
- (x) instruct an agent to take any of the actions mentioned in paragraphs (i), (ii), (iii), (iv), (v), (vi) or (vii).

(5) While a MSME Company Debt Restructuring Arrangement is in effect, a court may permit a creditor to take a step listed in subsection (4), where the court considers that-

- (a) it is reasonable to allow the creditor to take the necessary steps in exceptional circumstances; and
- (b) the steps will not-
 - (i) cause undue detriment to the MSME debtor to whom the Arrangement relates;
 - (ii) unfairly prejudice any other creditor; or
 - (iii) significantly undermine the objectives of the Arrangement.

(6) Nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a MSME debtor or property of the MSME debtor where the execution or other legal process or distress was completed at least one hundred and eighty days before the court order confirming the coming into effect of the MSME Company Debt Restructuring Arrangement, where-

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by the satisfaction of the debt.

(7) While the MSME Company Debt Restructuring Arrangement is in effect, a supplier of any essential goods or services shall not –

- (a) refuse to supply the good or service to a MSME debtor, by reason of the MSME debtor's default in paying charges due for the goods or services in relation to a period before the coming into effect of the Arrangement;

- (b) make it a condition of the supply of the goods or services to a MSME debtor, that payment be made of outstanding charges due for the goods or services in relation to a period before the coming into effect of the Arrangement; or
- (c) rely on an insolvency-related term of the agreement for the supply of the goods or services, except with the prior, written consent of the personal insolvency administrator.

(8) The personal insolvency administrator may give consent under paragraph (c) of subsection (7) where it is satisfied that the reliance on the insolvency-related term is necessary to put the MSME Company Debt Restructuring Arrangement into effect and to serve the objectives of the Arrangement.

(9) The personal insolvency administrator is not liable in damages for declining to give consent under paragraph (c) of subsection (7).

(10) A Debt Restructuring Arrangement shall not prevent the commencement or continuation of any criminal proceedings against an officer of a MSME debtor.

(11) Any action taken contrary to this section shall be *null and void*.

(12) Where a person has acquired an interest in property or any other right under a transaction with a creditor which arose from an action taken by a creditor or creditor's agent which was contrary to this section, the nullity of that action shall not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

(13) Where a MSME Company Debt Restructuring Arrangement does not include terms modifying or limiting the rights of a secured creditor or a counterparty to a hire-purchase agreement, nothing in this section shall affect the

right of a secured creditor or counterparty to a hire-purchase agreement to enforce its rights over the property subject to the security or hire-purchase agreement.

(14) Where a MSME Company Debt Restructuring Arrangement includes terms modifying or limiting the rights of a secured creditor or a counterparty to a hire-purchase agreement, in a manner specified in section 280 or otherwise, a secured creditor or counterparty to a hire-purchase agreement may only enforce its rights over the property subject to the security or hire-purchase agreement in accordance with the terms of the Arrangement.

(15) In relation to a MSME Company Debt Restructuring Arrangement, “insolvency-related term” is a provision of an agreement for the supply of any essential goods or services to a MSME debtor under which –

- (a) the agreement or the supply shall terminate, or any other thing may take place, because the MSME Company Debt Restructuring Arrangement procedure has commenced; or
- (b) the supplier shall be entitled to terminate the agreement or the supply, or to do any other thing, because the MSME Company Debt Restructuring Arrangement procedure has commenced.

288. (1) A creditor who is bound by a MSME Company Debt Restructuring Arrangement may apply to the court to object to a court order confirming the coming into effect of the Arrangement.

Challenge
to MSME
Company
Debt
Restructuring
Arrangement

(2) A creditor’s application to object to a MSME Company Debt Restructuring Arrangement under subsection (1) shall be based on one or more of the following grounds, that :-

- (a) the company is not a MSME debtor, or the company being a MSME debtor, does not meet the eligibility criteria in section 278;

- (b) the MSME Company Debt Restructuring Arrangement does not comply with the mandatory provisions specified in section 279;
- (c) the making and confirmation of the MSME Company Debt Restructuring Arrangement has not complied with the procedural requirements of this Part;
- (d) the MSME debtor has made a material false representation or omission in making its statement of financial affairs, or on supplying any accompanying information; or
- (e) the MSME Company Debt Restructuring Arrangement causes unfair prejudice to the interests of the creditor.

(3) A creditor's application to court to object to a MSME Company Debt Restructuring Arrangement shall be made within the period of twenty eight days beginning with the day on which the MSME Company Debt Restructuring Arrangement comes into effect.

(4) A creditor shall provide written notice to the MSME debtor and the personal insolvency administrator, of an application to object to a MSME Company Debt Restructuring Arrangement, including the grounds on which the application is based.

(5) Where on an application under this section the court is satisfied as to any of the grounds specified in subsection (2), the court may do either or all of the following :-

- (a) make an order directing that the MSME Company Debt Restructuring Arrangement shall not apply to the creditor who made the application to court, where to do so would not unfairly prejudice any other creditor;

- (b) direct the personal insolvency administrator to seek a decision from creditors as to whether they approve a revised proposal; or
- (c) make an order cancelling the MSME Company Debt Restructuring Arrangement in respect of any other included debt or creditor.

(6) Where a court has made an order under subsection (5), the court may require the MSME debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the MSME Company Debt Restructuring Arrangement was in effect.

(7) Where a court has made an order under paragraph (c) of subsection (5) with the effect of cancelling the Debt Restructuring Arrangement in respect of all included debts and all creditors, the court shall also make an order establishing a temporary Moratorium on creditor remedies, which shall endure for a period of twenty one days. This temporary Moratorium shall have the same effect as a Debt Protection Moratorium under section 287.

(8) In any case where a court makes an order under subsections (5) or (6), the court shall notify the MSME debtor and the personal insolvency administrator, the Official Receiver, and any creditors to whom the order under subsection (5) applies.

(9) Where a court gives notice to the Official Receiver under subsection (8), the Official Receiver shall, within a period of fourteen days, and in such manner as may be prescribed –

- (a) give public notice of the court order;
- (b) send a copy of such notice to the Registrar and the Authority; and

- (c) give written notice to any affected creditor of the court order made under subsection (5), and any requirements made under subsection (6).

Variation
of MSME
Company
Debt
Restructuring
Arrangement

289. (1) Where a court has made an order confirming the coming into effect of the MSME Company Debt Restructuring Arrangement, the Arrangement may be varied in accordance with its terms and subject to this section.

(2) A personal insolvency administrator, whether on its own initiative or on the request of a MSME debtor or creditor, shall propose a variation of a MSME Company Debt Restructuring Arrangement where -

- (a) it appears to the personal insolvency administrator that there has been a material change in the MSME debtor's circumstances; and
- (b) the personal insolvency administrator is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved by the MSME debtor's creditors.

(3) Where the conditions in subsection (2) apply, the personal insolvency administrator shall, as soon as is reasonably practicable-

- (a) require the MSME debtor to complete an updated statement of the MSME debtor's financial affairs;
- (b) assist the MSME debtor in preparing a proposal for a variation of the MSME Company Debt Restructuring Arrangement;
- (c) seek the consent of the MSME debtor to the proposal and also seek creditor approval of the proposal; and

- (d) write to each affected creditor to repond by indicating whether the proposal should be accepted.

(4) When writing to each affected creditor under subsection (3) in respect of a proposal to vary a MSME Company Debt Restructuring Arrangement, the personal insolvency administrator shall-

- (a) provide the creditor with a copy of-
 - (i) the proposal; and
 - (ii) the updated statement of the MSME debtor's financial affairs;
- (b) provide the creditor with a statement to the effect that-
 - (i) the MSME debtor satisfies the eligibility requirements of section 278;
 - (ii) to the best of the personal insolvency proposer's knowledge, the information contained in the MSME debtor's updated statement of financial affairs is complete and accurate;
 - (iii) the proposal is a reasonable means of addressing the relevant change in the MSME debtor's circumstances; and
 - (iv) the proposal has a reasonable prospect of being approved and implemented;
- (c) make a request of the creditor to provide a written response, *via* physical or electronic mail, setting out whether the proposal should be accepted; and

- (d) inform the creditor of the deemed notice provision in subsection (6) and the need to provide this response to the personal insolvency practitioner in advance of the applicable deadline.

(5) A proposal to vary a MSME Company Debt Restructuring Arrangement is accepted if -

- (a) the MSME debtor provides consent in writing to the variation of the Arrangement;
- (b) the personal insolvency administrator writes to the affected creditors of a MSME debtor under this section;
- (c) replies accepting the proposal are provided, before the deadline stated in subsection (4), by creditors whose claims represent a majority in value of two thirds *per cent* of the claims of all creditors bound by the Arrangement; and
- (d) where the variation includes terms modifying or limiting the rights of secured creditors and hire-purchase agreement counterparties, replies accepting the proposal as varied are provided, before the deadline stated in subsections (4), by any such creditor whose rights are so modified or limited in the variation.

(6) For the purposes of subsection (5), a creditor who does not provide a response to the personal insolvency administrator before the applicable deadline under subsection (4), shall be deemed to have stated that the proposal to vary the MSME Company Debt Restructuring Arrangement should be accepted.

(7) When a proposal to vary a MSME Company Debt Restructuring Arrangement has been accepted, the personal

insolvency administrator shall, as soon as is reasonably practicable, submit to the Official Receiver –

- (a) a notice of the creditor responses approving the variation to the MSME Company Debt Restructuring Arrangement; and
- (b) the final terms of the varied Debt Restructuring Arrangement.

(8) On receiving the documents set out in subsection (7), the Official Receiver shall issue a certificate recommending the confirmation of the varied Debt Restructuring Arrangement.

(9) On issuing a certificate recommending the confirmation of a varied Debt Restructuring Arrangement, the Official Receiver shall-

- (a) present this certificate, together with the notice of the creditor approval of the proposal to vary the MSME Company Debt Restructuring Arrangement, and the final terms of the varied Arrangement, to the appropriate court; and
- (b) notify the MSME debtor, the personal insolvency administrator and all creditors listed in the Arrangement, of the issuance of the certificate.

(10) Where the court receives a recommendation from the Official Receiver with respect to a variation of a MSME Company Debt Restructuring Arrangement under subsection (9), the court shall consider the recommendation, and make an order confirming the coming into effect of the varied Arrangement.

(11) Where the court makes an order confirming the coming into effect of the varied Arrangement under

Termination
of MSME
Company
Debt
Restructuring
Arrangement

subsection (10), the provisions of this Part shall apply to the varied Arrangement as if the varied Arrangement were an Arrangement confirmed under this section.

290. (1) The MSME debtor, acting with the personal insolvency administrator and creditors may at any time terminate a MSME Company Debt Restructuring Arrangement through the acceptance by a majority of two thirds in value of creditors of a proposal by the MSME debtor to terminate the Arrangement.

(2) Any of the following persons may apply to the court for an order terminating a MSME Company Debt Restructuring Arrangement :-

- (a) the MSME debtor;
- (b) a creditor;
- (c) the personal insolvency administrator; or
- (d) the Official Receiver.

(3) An application by a MSME debtor or creditor for an order terminating a MSME Company Debt Restructuring Arrangement may include an application for a bankruptcy order against the MSME debtor.

(4) An application under subsection (2) shall be based on one of the following grounds:-

- (a) a material false representation or omission has been found in the statement of the MSME debtor's financial affairs, which causes a material detriment to a creditor;
- (b) the making and confirmation of the MSME Company Debt Restructuring Arrangement has not complied with the procedural requirements of this Part;

- (c) the company, at the time of the submission of a proposal to the Official Receiver under section 282 was not a MSME debtor;
 - (d) the MSME debtor, at the time of the submission of a proposal to the Official Receiver under section 282, did not satisfy the eligibility criteria under section 278;
 - (e) the MSME debtor did not comply with the obligations imposed on it under the MSME Company Debt Restructuring Arrangement;
 - (f) the MSME debtor is in arrears in respect of the payments under the MSME Company Debt Restructuring Arrangement of an amount corresponding to a period of not less than three months;
 - (g) the MSME debtor has failed to carry out any action reasonably necessary to put the MSME Company Debt Restructuring Arrangement into effect; or
 - (h) the MSME debtor has unreasonably refused to consent to a variation of the MSME Company Debt Restructuring Arrangement.
- (5) On hearing an application under subsection (2), the court may-
- (a) dismiss the application;
 - (b) terminate the MSME Company Debt Restructuring Arrangement; or
 - (c) order the personal insolvency administrator to prepare a proposal for a variation of the MSME Company Debt Restructuring Arrangement under section 289.

(6) Where a court has made an order under subsection (5), the court may require the MSME debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the MSME Company Debt Restructuring Arrangement was in effect.

(7) In any case where a court makes an order under subsections (5) or (6), the court shall give written notice to the MSME debtor and the personal insolvency administrator, the Official Receiver and any creditors to whom the order under subsection (5) applies.

(8) Where a court notifies the Official Receiver under subsection (7), the Official Receiver shall, within a period of fourteen days after the date of the notification and in such manner as may be prescribed-

- (a) give public notice of the court order; and
- (b) send a copy of such notice to the Registrar and the Authority.

Completion
of MSME
Company
Debt
Restructuring
Arrangement

291. (1) A MSME Company Debt Restructuring Arrangement shall be completed when all of the obligations that it created have been discharged, unless the Arrangement has been terminated earlier under section 290.

(2) When an Arrangement is completed under subsection (1), the personal insolvency administrator shall, within twenty one days after the completion-

- (a) provide the MSME debtor with a certificate of completion; and
- (b) give written notice to the Official Receiver of the certificate of completion.

(3) The certificate of completion shall be *prima facie* evidence of the facts stated in it.

(4) When a MSME Company Debt Restructuring Arrangement is completed under subsection (1), except as provided below, the debts affected by the Arrangement shall be cancelled, and the MSME debtor shall not be liable to pay any part of the debts, including any penalties, interest shall and other sums which may have become payable in relation to those debts.

(5) The completion of a MSME Company Debt Restructuring Arrangement does not, except to the extent provided in the terms of the Arrangement-

- (a) release anyone else from a debt that it owes jointly with the MSME debtor; or
- (b) release a guarantor from the guarantee that the guarantor gave for the MSME debtor's debt.

(6) The completion of a MSME Company Debt Restructuring Arrangement does not, except to the extent provided in the terms of the Arrangement, release the MSME debtor from liability under any hire-purchase agreement or secured debt.

(7) When the Official Receiver receives the certificate of completion specified in subsection (2), the Official Receiver shall, within fourteen days of receipt of the certificate of completion-

- (a) give public notice of the court order; and
- (b) send a copy of such notice to the Registrar and the Authority.

(8) For the avoidance of doubt, when a MSME Company Debt Restructuring Arrangement has been completed under subsection (1), the MSME Company Debt Restructuring Arrangement shall no longer be in effect, and the Moratorium on creditor remedies under section 287 shall cease to apply.

Duties of
Personal
Insolvency
Administrator
under MSME
Company
Debt
Restructuring
Arrangement

292. (1) The duties of the personal insolvency administrator under a MSME Company Debt Restructuring Arrangement include-

- (a) generally giving effect to the Arrangement;
- (b) dealing with the MSME debtor's property in the manner specified in the Arrangement;
- (c) giving information about the administration of the Arrangement to the MSME debtor when the MSME debtor makes a reasonable request for the information;
- (d) giving information about the administration of the Arrangement to a creditor who-
 - (i) is a party to the Arrangement;
 - (ii) makes a reasonable request for the information; and
- (e) giving information about the administration of the Arrangement to the Official Receiver.

(2) The personal insolvency administrator shall not be reimbursed for expenses incurred in administering the Arrangement unless those expenses are of a kind specified in the relevant proposal for an MSME Company Debt Restructuring Arrangement.

(3) The personal insolvency administrator shall maintain a separate bank account for receiving all monies paid by MSME debtors under the MSME Company Debt Restructuring Arrangements, and shall not pay any money out of the account otherwise than-

- (a) for purposes related to the administration of MSME Company Debt Restructuring Arrangements;

- (b) in accordance with this Act; or
- (c) in accordance with a direction of the court.

(4) The personal insolvency administrator shall transmit monies paid by MSME debtors under MSME Company Debt Restructuring Arrangements to creditors in the agreed proportion on a timely basis.

(5) The personal insolvency administrator shall maintain complete and accurate records of the account of monies received from the MSME debtor and the monies disbursed to creditors under a MSME Company Debt Settlement Arrangement.

(6) The personal insolvency administrator shall maintain regular contact with the MSME debtor and conduct a review of the MSME Company Debt Restructuring Arrangement-

- (a) at least once in every period of six months; and
- (b) at such other times as may be required by the circumstances of the operation of the Arrangement.

(7) Where the circumstances of the MSME debtor have changed in a material respect, the personal insolvency administrator, in consultation with the MSME debtor, shall give due consideration as to whether the procedure for varying the MSME Company Debt Restructuring Arrangement under section 289 should be commenced.

293. (1) A personal insolvency proposer, when performing the functions of a personal insolvency proposer under this Part —

- (a) shall not act as an agent of the MSME debtor;
- (b) is not an agent of any creditor or creditors;

Personal
Insolvency
Proposers:
MSME
Company
Debt
Restructuring
Arrangements

- (c) shall engage in the personal insolvency proposer's professional capacity with the MSME debtor and creditors to seek, if possible, to achieve a solution which is satisfactory to both the MSME debtor and to creditors; and
- (d) shall exercise ones professional independent judgment, having regard to the provisions of this Act and any regulation, rules, standards, codes of conduct, practice directions or guidelines, made by the Authority under section 4.

(2) A person may serve as a personal insolvency proposer under this Part only if the person-

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the proposed Debt Restructuring Arrangement;
- (b) has certified in writing that the person is qualified under section 12 to be appointed and act as a key office holder with respect to the proposed Debt Restructuring Arrangement; and
- (c) has consented in writing to the appointment as a personal insolvency proposer and has not withdrawn consent at the time of appointment.

(2) A person who, with the person's consent, is appointed or acts as a personal insolvency proposer knowing that any of the requirements of paragraphs (a) and (b) of subsection (2) has not been met, commits an offence under this subsection and shall be liable on conviction to a fine not less than five hundred thousand rupees and not exceeding two million rupees or to rigorous imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Personal
Insolvency
Administrators:
MSME
Company Debt
Restructuring
Arrangements

294. (1) A personal insolvency administrator, when performing the functions of a personal insolvency administrator under this Part-

- (a) shall not act as an agent of the MSME debtor;

- (b) is not an agent of any creditor or creditors;
- (c) shall engage in the personal insolvency administrator's professional capacity with the MSME debtor and creditors to put the MSME Company Debt Restructuring Arrangement into effect; and
- (d) shall exercise ones professional independent judgment, having regard to the provisions in this Act and any regulation, rules, standards, codes of conduct, practice directions or guidelines, made by the Authority under section 4.

(2) A person may serve as a personal insolvency administrator under this Part only if the person-

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the Debt Restructuring Arrangement;
- (b) has certified in writing that the person is qualified under section 12 to be appointed and act as a key office holder with respect to the MSME Company Debt Restructuring Arrangement; and
- (c) has consented in writing to the appointment as a personal insolvency administrator and has not withdrawn consent at the time of appointment.

(3) A person who, with the person's consent, is appointed or acts as a personal insolvency administrator knowing that any of the requirements of paragraphs (a) and (b) of subsection (2) has not been met, commits an offence and shall be liable on conviction to a fine not less than five hundred thousand rupees and not exceeding two million rupees or to rigorous imprisonment for a term not exceeding three years or to both such fine and imprisonment.

MSME
Company
Debt
Restructuring
Arrangements:
court
directions

295. (1) The Official Receiver, or a personal insolvency administrator, may make an application to the court for directions or an order in relation to any matter arising in connection with a MSME Company Debt Restructuring Arrangement.

(2) On an application under subsection (1), the court may-

- (a) give the Official Receiver or personal insolvency administrator directions as the court deems appropriate;
- (b) treat the application as an application for Termination of the MSME Company Debt Restructuring Arrangement under section 290; or
- (c) order the personal insolvency administrator to commence the procedure for the variation of the MSME Company Debt Restructuring Arrangement under section 289.

PART XII

Liquidation

CHAPTER 1

ROLE OF LIQUIDATOR

Role of
liquidator

296. Subject to section 337 a liquidator of a company in liquidation has the following objective –

- (a) to exercise control over the property of the company;
- (b) to protect the property of the company;
- (c) to realise property of the company; and
- (d) to distribute –

(i) the proceeds of realisation of property of the company; and

(ii) where applicable, property of the company,

subject to the applicable provisions of this Act.

CHAPTER 2

PROCESS OF LIQUIDATION

297. The liquidation of a company commences on the day on which, and at the time at which, a liquidator other than a replacement liquidator is appointed under this Part.

When
liquidation
commences

298. (1) A company is put into liquidation by the appointment as liquidator of –

Appointment
of liquidator

(a) a named person; or

(b) the Official Receiver.

(2) A liquidator may be appointed by –

(a) the company, by special resolution;

(b) the board of the company, by resolution, on the occurrence of an event specified in the articles of the company;

(c) the court on the application of –

(i) the company;

(ii) one or more directors of the company;

(iii) a contributory of the company;

(iv) a creditor (including a contingent or prospective creditor) of the company;

(v) if the company is in administration, the administrator;

- (vi) a receiver;
- (vii) the Registrar; or
- (viii) the Authority; or

(d) a resolution of creditors passed at an outcome meeting under section 214.

(3) The Official Receiver may not be appointed as liquidator except –

(a) under paragraph (a) of subsection (2), where the special resolution is passed by reason of the Official Receiver exercising voting rights attaching to shares in the company of –

(i) a person in respect of whom a Bankruptcy Order has been made; or

(ii) another body corporate of which the Official Receiver is liquidator; or

(b) by the court.

(4) The court may appoint a liquidator under paragraph (c) subsection (2) where the court is satisfied that –

(a) taking into account section 303 the company is insolvent; or

(b) it is just and equitable that the company be put into liquidation.

(5) The court shall not entertain an application under paragraph (c) subsection (2) made by a contingent or prospective creditor unless –

(a) such security for costs has been provided as necessary; and

- (b) the court is satisfied that a *prima facie* case for liquidation has been established.

(6) An appointment under paragraph (a) or (b) of subsection (2) shall be in writing.

(7) Where a company is ordered to be put into liquidation under a power other than that contained in paragraph (c) of subsection (2), including under paragraph (d) of subsection (2) of section 97 and subsection (3) of section 177 of the Companies Act, the appointment of the liquidator shall for all purposes be treated as having been made under paragraph (c) of subsection (2) on an application by the Registrar under paragraph (vii) of that subsection.

299. Where an application under paragraph (c) of subsection (2) of section 298 has been made and served on the company, and is pending, a liquidator may not be appointed under paragraph (a) or (b) of subsection (2) of section 298 except –

Restriction on
appointment
of liquidator
by the
company or
board

- (a) if the appointment is made within seven working days after the application is served on the company;
- (b) if the application was made by a creditor under paragraph (c) of subsection (2) of section 298, with the prior, written consent of that creditor;
- (c) with the permission of the court; or
- (d) as a replacement liquidator to fill a vacancy in the office of liquidator, where the previous liquidator was appointed in accordance with –
 - (i) one of the preceding paragraphs of this subsection; or
 - (ii) this paragraph.

300. (1) Where a liquidator is appointed under paragraph (a) of subsection (2) of section 298, the company shall

Commencement
of liquidation to
be recorded

record in the special resolution appointing the liquidator, the date on which and the time at which, the special resolution was passed.

(2) Where a liquidator is appointed under paragraph (b) of subsection (2) of section 298, the board of the company shall record in the resolution appointing the liquidator the date on which, and the time at which, the resolution was passed.

(3) Where a liquidator is appointed under paragraph (c) of subsection (2) section 298, the court shall record in the order appointing the liquidator the date on which, and the time at which, the order was made.

Appointment
of liquidator
at outcome
meeting

301. (1) In the case of the appointment by the creditors, by resolution at an outcome meeting, of a liquidator under paragraph (b) of subsection (2) of section 214, the Official Receiver shall be the liquidator where –

- (a) the resolution does not specify a person for appointment; or
- (b) the appointment of the person specified for appointment in the resolution would be in contravention of section 312.

(2) Where the creditors by resolution at an outcome meeting appoint a liquidator under paragraph (b) of subsection (2) of section 214 the person who was the administrator at the end of the administration shall –

- (a) confirm at the meeting whether or not subsection (1) applies; and
- (b) if subsection (1) applies, forthwith give notice of that fact to the Official Receiver, in such manner as may be prescribed.

Declaration of
solvency

302. (1) Subject to paragraph (a) of subsection (4), this section applies to a company where –

- (a) a liquidator is appointed under paragraph (a) or (b) of subsection (2) of section 298; and
- (b) before that appointment, a written declaration that meets the conditions in subsection (2), made by –
 - (i) all of the directors of the company; or
 - (ii) in the case of a company having more than two directors, a majority of the directors of the company,

is filed with the Registrar and Authority.

(2) The conditions referred to in paragraph (b) of subsection (1) are that the declaration –

- (a) states that –
 - (i) the directors making the declaration have made a full inquiry into the affairs of the company; and
 - (ii) having done so, those directors have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after commencement of a liquidation of the company;
- (b) includes a full statement about the affairs, business, property and financial circumstances of the company;
- (c) showing as at the latest practicable date before the making of the declaration –
 - (i) the particulars of its property, including any inventory of stock and the total amount expected to be realised therefrom;

- (ii) the debts and other liabilities of the company;
 - (iii) the name and address of each of its creditors;
 - (iv) the encumbrance or encumbrances (if any) held by each creditor;
 - (v) the date on which each encumbrance was created; and
 - (vi) the estimated costs, charges and expenses of the liquidation and the estimated remuneration of the liquidator;
- (d) supported by affidavit by one or more of the persons who are directors of the company, as at the date of the statement;
- (e) is made at a meeting of the directors of the company; and
- (f) is made within the twenty working days immediately preceding the date of appointment of the liquidator.

(3) A director making a declaration under paragraph (b) of subsection (1) without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration commits an offence.

(4) Where a liquidator believes, or has reasonable grounds to believe, that the company will not be able to pay its debts in full within the period specified in a declaration made and filed under paragraph (b) of subsection (1) –

- (a) this section ceases to apply to the company, but without affecting or limiting subsection (3); and

- (b) the liquidator shall as soon as practicable give written notice to the Registrar and Authority that this section no longer applies to the company.

(5) A liquidator who fails to comply with paragraph (b) of subsection (4) commits an offence.

(6) The application of this section, by virtue of subsection (1), has effects under sections 306, 308, 310, 317, 319, 326, 330, 338, 353, 357, 358, 421 and 426.

303. For the purposes of an application under paragraph (c) of subsection (2) of section 298, evidence of failure for twenty one days from the date of service of a statutory demand to comply with the demand shall not be admissible as evidence that the company is insolvent and the presumption in subsection (4) of section 409 shall not apply, by reason of such failure unless the application is made within thirty working days after the last date for compliance with the demand.

Evidence of
inability to
pay debts

304. (1) Where an application is made under paragraph (c) of subsection (2) of section 298, the court may appoint the Official Receiver as the provisional liquidator, where the court –

Appointment
of provisional
liquidator

- (a) considers that it is likely that an order for the appointment of a liquidator will be made when the application is heard; and
- (b) is satisfied on cogent evidence that property of the company is or affairs of the company are in serious jeopardy pending the determination of the application.

(2) In an order under subsection (1), the court shall record the date on which, and the time at which, the order is made.

(3) The provisional liquidation of a company commences on the day on which, and at the time at which, the appointment of a provisional liquidator takes effect under subsection (4).

(4) The appointment of a provisional liquidator takes effect on the day on which, and at the time at which, an order under subsection (1) is made.

(5) A provisional liquidator shall, as soon as practicable and in any event within five working days after being appointed, give notice of the appointment to such persons and in such manner, as may be prescribed.

(6) The appointment of a provisional liquidator –

(a) may be terminated by the court on the application of –

(i) the provisional liquidator; or

(ii) a person specified in paragraph (c) of subsection (2) of section 298;

(b) shall terminate upon –

(i) the making of an order for the appointment of a liquidator; or

(ii) the refusal by the court of an application, under paragraph (c) of subsection (2) of section 298.

(7) In making an order under subsection (6) the court may, as may be necessary, make any other ancillary order.

(8) Within five working days after the appointment of a liquidator, the appointment of the provisional liquidator shall terminate. The provisional liquidator shall give notice of the termination to such persons and in such manner as may be prescribed.

(9) Where the appointment of a provisional liquidator terminates under subparagraph (i) of paragraph (b) of subsection (6), the provisional liquidator shall forthwith do all that is necessary to put the liquidator in control of the affairs, business and property of the company.

305. (1) In such circumstances as may be prescribed, this section shall not apply. Directors' statement in liquidation

(2) Within five working days after the liquidation of a company commences, or within any period of extension under subsection (4), the directors of the company shall provide to the liquidator a full statement about the affairs, business, property and financial circumstances of the company, showing as at the latest practicable date before the provision of the statement –

- (a) the particulars of its property, including any inventory of stock and the total amount expected to be realised therefrom;
- (b) the debts and other liabilities of the company;
- (c) the name and address of each of its creditors;
- (d) the encumbrance or encumbrances (if any) held by each creditor; and
- (e) the date on which each encumbrance was created.

(3) The statement in subsection (2) shall be supported by affidavit by the directors of the company, or by such of the following persons as the liquidator may reasonably request –

- (a) a person other than a director who is or has been an officer of the company;
- (b) a person who has taken part in the formation, promotion or management of the company at any time within the period of twelve months immediately preceding the date of commencement of the liquidation; or
- (c) a person who is or has been within that period a director or other officer of or in the employment

of a body corporate that is, or within that period was, a director or other officer of the company to which the statement relates.

(4) The liquidator or the court may extend the time limit for the provision of a statement under subsection (2).

(5) If a person fails to comply with subsection (2) or subsection (3), that person commits an offence.

Liquidator
to convene
meeting of
creditors

306. (1) A liquidator shall hold a meeting of creditors –

- (a) where section 302 does not apply to the company, within ten working days after the liquidation commences; or
- (b) where section 302 ceases to apply to the company, within ten working days after that cessation.

(2) The following business shall be conducted at the meeting :–

- (a) consideration by creditors of the documents tabled at the meeting;
- (b) a resolution of creditors on whether or not the liquidator should be replaced; and
- (c) if the liquidator is seeking to establish a liquidation creditors' committee, one or more resolutions of creditors on –
 - (i) whether or not to establish such a committee under section 308; and
 - (ii) if such a committee is to be established, who are to be appointed as members of that committee.

(3) The liquidator shall table at the meeting –

- (a) a statement to the effect that the conduct and performance of Insolvency Practitioners is monitored by the Authority and providing contact details of the Authority;
 - (b) the written certification specified in paragraph (c) of subsection (1) of section 312;
 - (c) the written consent specified in paragraph (d) of subsection (1) of section 312;
 - (d) an interests statement, signed by the liquidator, that complies with section 30; and
 - (e) the basis or bases and, as applicable, the hourly and percentage rate or rates, and fixed level or levels, of the liquidator's proposed remuneration.
- (4) At least seven working days before the meeting is required under subsection (2) to be held, the liquidator shall convene the meeting by –
- (a) giving written notice of the meeting to as many of the company's creditors as is reasonably practicable; and
 - (b) giving public notice of the meeting.
- (5) A notice under paragraph (a) of subsection (4) shall –
- (a) state that a liquidator has been appointed;
 - (b) state the following :–
 - (i) the liquidator's full name;
 - (ii) the date of the appointment;

- (iii) the identity of the appointer of the liquidator and, where the appointer was the court, the identity of the person on whose application the appointment was made; and
 - (iv) the liquidator's office address and contact number to which, during normal working hours, inquiries may be directed;
- (c) specify –
- (i) the documents to be tabled at the meeting; and
 - (ii) the business to be conducted at the meeting; and
- (d) summarise the matters referred to in section 308 and, if the liquidator is seeking to establish a liquidation creditors' committee, the liquidator may invite nominations for membership of such a committee.

(6) The Fifth Schedule shall apply to a meeting referred to in subsection (2).

(7) Within two working days after the holding of the meeting, the liquidator shall send –

- (a) a copy of the statement referred to in paragraph (a) of subsection (3);
- (b) a copy of the interests statement referred to in paragraph (d) of subsection (3); and
- (c) a copy of the notice referred to in paragraph (a) of subsection (4),

to the Registrar and Authority.

(8) A liquidator who fails to comply with subsection (1), (3), (4), (5) or (7) commits an offence.

307. (1) Where a resolution that a liquidator should be replaced is passed under paragraph (b) of Subsection (2) of section 306 the liquidator shall forthwith make an application to court for the appointment of a replacement liquidator.

Replacement
liquidator

(2) On an application under this section, the court may make an order –

(a) either –

(i) appointing a suitable replacement liquidator;
or

(ii) specifying a process for the appointment of a suitable replacement liquidator; and

(b) removing the liquidator upon appointment of the replacement liquidator.

(3) A replacement liquidator shall, within five working days after appointment, send to each known creditor an interests statement, signed by the liquidator, that complies with section 30.

308. (1) This section shall not apply to a company for so long as section 302 applies to the company.

Creditors'
committee in
liquidation

(2) At any time during a liquidation and if a liquidation creditors' committee has not already been established, a liquidator –

(a) shall seek the establishment of a liquidation creditors' committee, if so requested by a creditor in such manner as may be prescribed;

(b) may seek the establishment of a liquidation creditors' committee, on the liquidator's own motion.

(3) The establishment of a liquidation creditors' committee and appointments to such a committee require one or more resolutions of creditors adopted at a meeting of creditors –

- (a) which, in the case of a request made under paragraph (a) of subsection (2), the liquidator shall hold within seven working days after the liquidator receives the request; and
- (b) the notice of which shall –
 - (i) summarise the matters referred to in this section; and
 - (ii) invite nominations for membership of the liquidation creditors' committee.

(4) The Fifth Schedule shall apply to a meeting referred to in subsection (3).

(5) If established, a liquidation creditors' committee –

- (a) shall have the following functions :–
 - (i) to consult with the liquidator about matters relating to the liquidation; and
 - (ii) to consider reports from the liquidator sent under subsection (6); and
- (b) may not give directions to the liquidator.

(6) If a liquidation creditors' committee is established, the liquidator shall send reports to the committee containing such information, in such manner, and within such periods as may be prescribed.

(7) A person shall not be eligible to be a member of a liquidation creditors' committee unless the liquidator is satisfied that the person is –

- (a) a creditor;
- (b) the agent of a creditor under a general power of attorney; or
- (c) authorised in writing by a creditor to be a member.

(8) With respect to a liquidation creditors' committee, the following matters shall be subject to such requirements, restrictions and limitations as may be prescribed : –

- (a) membership and termination of membership of the committee;
- (b) notice of the establishment of the committee and of matters relating to the committee;
- (c) the procedure for convening meetings of the committee;
- (d) protection of acts, omissions or decisions done or made by members of the committee;
- (e) reimbursement of expenses of members of the committee; and
- (f) transactions by members of the committee and their related parties.

(9) The consequences of defects in the qualifications, nomination or election of members of a liquidation creditors' committee shall be as may be prescribed.

(10) Where, by reason of vacancies in a liquidation creditors' committee, the committee is unable to act, the liquidator shall as soon as practicable give written notice of that fact to each known creditor.

Contributories'
committee in
liquidation

309. (1) At any time during a liquidation and if a liquidation contributories' committee has not already been established, a liquidator –

- (a) shall seek the establishment of a liquidation contributories' committee, if so requested by a contributory in such manner as may be prescribed; or
- (b) may seek the establishment of a liquidation contributories' committee, on the liquidator's own motion.

(2) The establishment of a liquidation contributories' committee and appointments to such a committee require one or more resolutions of contributories adopted at a meeting of contributories –

- (a) which, in the case of a request made under paragraph (a) of subsection (1), the liquidator shall hold within seven working days after the liquidator receives the request; and
- (b) the notice of which shall –
 - (i) summarise the matters referred to in this section; and
 - (ii) invite nominations for membership of the liquidation contributories' committee.

(3) The Fifth Schedule shall apply to a meeting referred to in subsection (2).

(4) If established, a liquidation contributories' committee –

- (a) shall have the following functions : –

- (i) to consult with the liquidator about matters relating to the liquidation; and
 - (ii) to consider reports from the liquidator sent under subsection (5); and
- (b) may not give directions to the liquidator.

(5) If a liquidation contributories' committee is established, the liquidator shall send reports to the committee containing such information, in such manner, and within such periods as may be prescribed.

(6) A person shall not be eligible to be a member of a liquidation contributories' committee unless the liquidator is satisfied that the person is –

- (a) a contributory;
- (b) the agent of a contributory under a general power of attorney; or
- (c) authorised in writing by a contributory to be a member.

(7) With respect to a liquidation contributories' committee, the following matters shall be subject to such requirements, restrictions and limitations as may be prescribed –

- (a) membership and termination of membership of the committee;
- (b) notice of the establishment of the committee and of matters relating to the committee;
- (c) the procedure for convening meetings of the committee;
- (d) protection of acts, omissions or decisions done or made by members of the committee;

- (e) reimbursement of expenses of members of the committee; and
- (f) transactions made by members of the committee and their related parties.

(8) The consequences of defects in the qualifications, nomination or election of members of a liquidation contributories' committee shall be as may be prescribed.

(9) Where, by reason of vacancies in a liquidation contributories' committee, the committee is unable to act, the liquidator shall as soon as practicable give written notice of that fact to each known contributory.

Meetings in
liquidation of
shareholders,
creditors,
contributories
and committees

310. (1) A liquidator shall, at all times until the end of the liquidation –

- (a) where section 302 applies to the company, convene such meetings of shareholders as are requested by –
 - (i) not less than five shareholders; or
 - (ii) a shareholder or shareholders representing not less than ten percent of the total voting rights of all shareholders,

within five working days after receiving the request from the shareholder or shareholders;

- (b) convene such meetings of creditors as the liquidator sees fit;
- (c) convene such meetings of shareholders as the liquidator sees fit;
- (d) convene such meetings of contributories as the liquidator sees fit;

- (e) convene such meetings of a liquidation creditors' committee (if any) –
 - (i) as the liquidator sees fit;
 - (ii) as that committee may reasonably request, within five working days after receiving the committee's request; and
- (f) convene such meetings of a liquidation contributories' committee (if any) –
 - (i) as the liquidator sees fit;
 - (ii) as that committee may reasonably request, within five working days after receiving the committee's request.

(2) The Fifth Schedule shall apply to the meetings referred to in paragraphs (b) and (d) of subsection (1).

(3) The requirements for notice and the conduct of business of meetings convened under paragraphs (e) and (f) of subsection (1) shall be as may be prescribed.

(4) A liquidator shall have regard to the views set out in a resolution passed at a meeting convened under this section.

(5) The sole shareholder or sole contributory of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders or contributories, as the case may be, and that view shall for all purposes be treated as if it were set out in a resolution passed at a meeting of shareholders or contributories, as the case may be.

311. A liquidation ends on the day at which, and at the time at which – End of
liquidation

- (a) all of the property of the company as at the commencement of the liquidation has been realised, distributed or disclaimed, and the proceeds of realisation of property have been distributed to the extent practicable; or
- (b) the court ends the liquidation, under section 362 or in the exercise of any other power the court may exercise.

CHAPTER 3

APPOINTMENT OF LIQUIDATOR OR PROVISIONAL LIQUIDATOR

Who may be
appointed and
act as liquidator

312. (1) Other than the Official Receiver, a person may be appointed or act as liquidator of a company, only if the person –

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the liquidation;
- (b) is not disqualified under section 313 from being appointed or acting as a liquidator;
- (c) has certified in writing that the person –
 - (i) is qualified under section 12 to be appointed and to act as a key office holder with respect to the liquidation; and
 - (ii) is not disqualified under section 313 from being appointed or acting as a liquidator; and
- (d) has consented in writing to the appointment and has not withdrawn the consent at the time of appointment.

(2) A person other than the Official Receiver who, with the person's consent, is appointed or acts as liquidator of a company knowing that any of the requirements of paragraphs (a), (b) and (c) of subsection (1) has not been met, commits an offence.

313. (1) Other than the Official Receiver, the following persons and their related parties are disqualified from being appointed or acting as a liquidator of a company –

Disqualifications
from being
appointed or
acting as a
liquidator

- (a) a person who is or who has within the period of two years immediately preceding the date of commencement of the liquidation been a creditor of the company, except as an administrator of the company;
- (b) a person who is or who has within the period of two years immediately preceding the date of commencement of the liquidation been a director or other officer or an auditor or employee of the company or of a related company;
- (c) a person who has or who has had within the period of two years immediately preceding the date of commencement of the liquidation –
 - (i) a direct interest in a share issued by the company or by a related company; or
 - (ii) an indirect interest in five percent or more of any class of shares issued by the company or by a related company; or
- (d) a person who is or has been a receiver of property or appointee in respect of property of the company within the period of three years immediately preceding the date of commencement of the liquidation.

(2) A person who is appointed or acts as a liquidator when disqualified under subsection (1) commits an offence.

Appointment
of two or more
liquidators or
provisional
liquidators

314. (1) Two or more persons may be appointed as liquidators in any case where this Part provides for the appointment of a liquidator.

(2) Where two or more persons are appointed as liquidators –

- (a) a liquidator's functions and powers may be performed or exercised by any one of them, or by any two or more of them together, except so far as the resolution or order appointing them provides otherwise;
- (b) any liability of the persons as liquidators shall be joint and several; and
- (c) a reference in this Act to a liquidator refers to whichever one or more of the liquidators as the case requires.

Notice of
liquidator's
appointment and
details

315. (1) A liquidator shall –

- (a) before the close of the next working day after appointment, give written notice of the appointment to the Registrar and Authority;
- (b) within two working days after appointment give public notice of the liquidator's appointment, including –
 - (i) the liquidator's full name;
 - (ii) the date of the appointment;
 - (iii) the identity of the appointer of the liquidator and, where the appointer was the court, the identity of the person on whose application the appointment was made;

- (iv) the liquidator's office address and contact number to which, during normal working hours, inquiries may be directed; and
 - (v) a statement to the effect that requests may be made in the prescribed manner for the establishment of committees of creditors and contributories to consult with and consider reports from the liquidator; and
- (c) send a copy of the public notice –
- (i) to each known creditor and contributory; and
 - (ii) to the Registrar and Authority; and
- (d) within twenty working days after appointment –
- (i) prepare a report about the affairs, business, property and financial circumstances of the company;
 - (ii) in such manner as may be prescribed, send to each known creditor and contributory the report referred to in paragraph (i); and
 - (iii) send a copy of the report to the Registrar and Authority.

(2) Where the appointment of a liquidator is in addition to a liquidator who already holds a key office or is in place of a person who has vacated office as liquidator, each notice under subsection (1) shall state that fact.

(3) In the event of any change in a liquidator's office address or contact number, the liquidator shall within two working days –

- (a) give public notice of the new address or contact number, as the case may be; and

- (b) send a copy of the public notice to the Registrar and Authority.

(4) A failure to comply with this section shall not affect the validity of a person's appointment as liquidator.

(5) A liquidator who fails to comply with this section commits an offence.

Documents
to refer to
liquidation

316. (1) For so long as a company is in liquidation, the liquidator shall ensure that –

- (a) every document issued or signed by or on behalf of the company or the liquidator shall have the words “in liquidation” after the name of the company where it first appears; and
- (b) if the company has one or more websites, each page of each website shall state prominently that the company is in liquidation.

(2) A failure to comply with subsection (1) shall not affect the validity of –

- (a) a person's appointment as liquidator; or
- (b) any document.

(3) Every person who fails to comply with subsection (1) commits an offence.

CHAPTER 4

EFFECTS OF LIQUIDATION

No enforcement
of encumbrance
during
liquidation

317. (1) This section shall not apply to a company for so long as section 302 applies to the company.

(2) Subject to section 322, during the liquidation of a company, no person shall enforce an encumbrance over property of the company, except with –

- (a) the prior, written consent of the liquidator; or
- (b) the permission of the court on such terms and conditions as may be necessary.

(3) The liquidator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (2).

318. (1) During the liquidation of a company, no formal proceeding against the company or any of its property shall be commenced or continued, except with –

No
commencement
or continuation
of proceedings
during
liquidation

- (a) the prior, written consent of the liquidator; or
- (b) the permission of the court on such terms and conditions as necessary.

(2) For the purposes of subsection (1), “formal proceeding” includes –

- (a) any legal proceeding; and
- (b) any mediation or arbitral process or other formal adversarial process.

(3) The liquidator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (1).

319. (1) This section shall not apply to a company for so long as section 302 applies to the company.

No execution
or other
process during
liquidation

(2) Subject to section 322, during the liquidation of a company, no execution or other legal process, or the levying of distress, against the company or any of its property shall be commenced or continued, except with –

- (a) the prior, written consent of the liquidator; or
- (b) the permission of the court on such terms and conditions as may be necessary.

(3) The liquidator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (2).

No benefit of execution or other process unless it has been completed before

320. (1) Subject to subsection (2), a creditor shall not be entitled to the benefit of any execution or other legal process or distress against a company in liquidation or any of its property unless the execution or other legal process or distress was completed before the commencement of the liquidation, except with the permission of the court on such terms and conditions as may be necessary.

(2) For the purposes of subsection (1) –

- (a) an execution against movable or immovable property shall be completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt shall be completed by the satisfaction of the debt.

(3) A person who acquires property of the company in good faith –

- (a) from a Fiscal charged with an execution process; or
- (b) on which distress has been levied,

acquires good title as against the company and liquidator.

(4) Nothing in this section shall affect or limit the application of sections 412 to 419.

321. (1) This section applies to an execution process against property of a company in liquidation that was levied but not completed within the meaning of subsection (2) of section 320 before the commencement of the liquidation.

Duties of Fiscal
in liquidation

(2) Notwithstanding any other enactment, subject to subsection (3) and unless the court orders otherwise on the application of the execution creditor, a Fiscal shall, as soon as practicable after the liquidation commences –

- (a) deliver to the liquidator any property of the company that is in or comes into the Fiscal's possession or custody or under the Fiscal's control as a result of the execution process; and
- (b) cause the liquidator to be paid –
 - (i) any proceeds of realisation of property of the company under the execution process;
 - (ii) any money of the company received or seized under the execution process; and
 - (iii) any money paid to avoid seizure or sale of property of the company under the execution process,

where such proceeds or money are in or come into the Fiscal's possession or custody or under the Fiscal's control or have been paid into court (and have not already been paid out).

(3) The Fiscal may retain or cause to be retained –

- (a) from the property delivered under paragraph (a) of subsection (1), property of a value that the Fiscal may reasonably determine to represent the costs of the execution process or attachment as the case may be, incurred by the Fiscal; or

- (b) from proceeds or money paid under paragraph (b) of subsection (1), the costs of the execution process or attachment as the case may be, incurred by the Fiscal.

Power
exercised before
commencement
of liquidation

322. (1) Where, before the commencement of a liquidation, and by way of enforcement of –

- (a) an encumbrance over property; or
- (b) a right of the owner or lessor of property, including under a hire-purchase agreement, to take possession of the property or otherwise recover it.

(2) Nothing in sections 317, 319 and 325 shall prevent the receiver, appointee or other person from performing or exercising a function or power in relation to the said property of the company where the said receiver, appointee or other person, has –

- (a) entered into possession or custody or assumed control of the property of the company; or
- (b) exercised any other power in relation to the property of the company.

(3) Subsection (1) of section 325 shall not apply to an agreement, transaction or dealing that affects the property referred to in subsection (1) and is entered into in the performance or exercise of a function or power of the receiver, appointee or other person referred to in subsection (1).

Effect of
liquidation on
directors and
other agents of
the company

323. (1) The appointment of a liquidator does not remove the directors of the company from office.

(2) A director of a company that is in liquidation may not perform or exercise, or purport to perform or exercise, a function or power as an officer of the company except –

- (a) to appeal against an order of the court under paragraph (c) of subsection (2) of section 298 in such manner, within such period, and with such requirements for notice of intention to appeal as may be prescribed, but the director shall not have any resort to the property of the company in connection with any such appeal (subject to any order the court may make at the conclusion of the appeal); or
- (b) as expressly permitted by this Part .

(3) The appointment of a liquidator revokes the authority of any agent of the company appointed by or on behalf of the board of the company.

324. (1) Where a liquidator is appointed, every director and other officer of the company shall –

Requirement
to provide
information to
liquidator

- (a) as soon as practicable and in any event within five working days after the appointment make available to the liquidator all books, records and documents relating to the affairs, business, property and financial circumstances of the company in the person's possession or custody or under the person's control;
- (b) if required to do so by the liquidator, verify by affidavit within a reasonable period that the books, records and documents are complete and correct;
- (c) if the company has a common seal, promptly make the common seal available for use by the liquidator; and
- (d) give the liquidator such assistance as the liquidator may reasonably request.

(2) On the application of the liquidator, the court may make an order requiring a director or other officer of the company to comply with subsection (1).

(3) A verification under paragraph (b) of subsection (1) may be qualified in relation to specific matters dealt with in the books, records and documents where the person giving the verification does not –

- (a) consider the books, records and documents to be complete and correct; or
- (b) have the knowledge necessary to give a verification.

Effect of
liquidation on
dealing with
property

325. (1) Subject to section 322, an agreement, transaction or dealing by a company in liquidation, or by a person on behalf of the company, that affects the property of the company is void unless the agreement, transaction or dealing was entered into –

- (a) by the liquidator, on behalf of the company;
- (b) with the prior, written consent of the liquidator;
- (c) in accordance with subsection (1) of section 381;
or
- (d) under an order of the court.

(2) The liquidator shall not be liable in damages for declining to give consent under paragraph (b) of subsection (1).

(3) The court may by order give effect to an agreement, transaction or dealing that is void under subsection (1).

(4) Subsection (1) shall not apply to a payment, made by a bank, that is –

- (a) out of an account kept by the company with the bank;
- (b) in good faith and in the ordinary course of the bank's banking business; and
- (c) on or before the earlier of –
 - (i) the day on which the bank was notified in writing by the liquidator that the liquidation had commenced; and
 - (ii) the day on which the bank had reason to believe that the company was in liquidation.

(5) A director or other officer of the company who –

- (a) purports, on the company's behalf, to enter into an agreement, transaction or dealing that is void under subsection (1); or
- (b) is in any other way concerned in, or is a party to, an agreement, transaction or dealing that is void under subsection (1),

shall commit an offence.

(6) The court may order a director or other officer who is convicted of an offence under subsection (5) to compensate any person, including the company, that has suffered loss as a result of the act or omission constituting the offence.

(7) If any question arises as to whether, on the date on which a liquidator was appointed, an agreement, transaction or dealing that affects property of the company was entered into before or after the time at which the liquidator was appointed, that agreement, transaction or dealing shall be presumed, unless the contrary is proved, to have been entered into after that time.

(8) Notwithstanding any other enactment, no person may, as against the liquidator, claim a lien over a book, record or document of the company.

Effect of
liquidation
on transfer of
shares

326. (1) Subject to this section –

- (a) a share in a company in liquidation shall not be transferred; and
- (b) the status of a shareholder of a company in liquidation, as to its liabilities, may not be altered.

(2) Where –

- (a) section 302 does not apply to the company; and
- (b) the liquidator is satisfied that the transfer of a share in the company in liquidation is in the interests of the creditors as a whole,

the liquidator may consent to the transfer.

(3) The liquidator shall not be liable in damages for declining to give consent under subsection (2).

(4) The court may, where it is satisfied that substantial injustice would otherwise result, make an order –

- (a) for the transfer of a share of a company in liquidation; or
- (b) altering the status of a shareholder of a company in liquidation, as to its liabilities.

(5) Nothing in this section shall affect or limit the application of section 46 of the Companies Act.

Essential
services in
liquidation

327. (1) Notwithstanding anything to the contrary in any other enactment, a supplier of an essential goods or services shall not –

- (a) refuse to supply the good or service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the good or service in relation to a period before the commencement of the liquidation; or
- (b) make it a condition of the supply of the good or service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the good or service in relation to a period before the commencement of the liquidation.

(2) The charges incurred by a liquidator for the supply of an essential good or service shall be an expense of the liquidation for the purposes of the Fourth Schedule.

328. Unless an order of court provides otherwise, where a provisional liquidator is appointed by an order made under section 304 any reference made to a liquidator or to a liquidation, in the following sections shall be read and construed as if it was a reference applicable to the provisional liquidator or provisional liquidation, respectively, as the case may be -

Applicability
of this Chapter
in provisional
liquidation

- (a) section 317;
- (b) section 318;
- (c) section 319;
- (d) section 322;
- (e) section 323, for the purposes if this section the reference in section 325 to paragraph (c) of subsection (2) of section 298 shall be read as subsection (1) of section 304;
- (f) section 325;
- (g) section 326; and
- (h) section 327 (excluding the reference in subsection (2)).

CHAPTER 5

POWERS OF LIQUIDATOR

Powers of
liquidator

329. (1) A liquidator may do all such things as may be necessary or desirable for the matters referred to in section 296.

(2) A liquidator shall have the powers specified in the Ninth Schedule.

(3) Subject to any requirement, as may be prescribed, for –

(a) the approval of –

- (i) creditors;
- (ii) shareholders;
- (iii) contributories;
- (iv) a liquidation creditors' committee; or
- (v) a liquidation contributories' committee; or

(b) the permission of the court,

a liquidator may exercise the powers referred to in subsection (2).

(4) In the exercise or discharge of a power or function the liquidator shall be the company's agent. A person dealing with the liquidator in good faith and for value shall not be required to inquire whether the liquidator is acting within the liquidator's powers.

Request by
liquidator for
cooperation

330. (1) Paragraph (b) of subsection (2) shall not apply to a company for so long as section 302 applies to the company.

(2) A liquidator may by written notice –

- (a) subject to section 438, request a director or shareholder of the company or any other person to deliver to the liquidator such books, records or documents of the company in that person's possession or custody or under that person's control relating to the liquidation as the liquidator may determine; and
- (b) request –
 - (i) a person who has taken part in the formation, promotion or management of the company;
 - (ii) a past or present shareholder of the company;
 - (iii) a past or present director or other officer of the company;
 - (iv) a past or present receiver of property or appointee in respect of property of the company;
 - (v) a person who is or has been an employee of the company;
 - (vi) a person who is acting or has at any time acted as a lawyer for the company (but subject to legal advice privilege or litigation privilege);
 - (vii) an accountant or auditor of the company; or
 - (viii) another person having knowledge of the affairs of the company,to do such matters specified in subsection (3), if and to the extent reasonable.

- (3) The matters referred to in subsection (2) shall be to –

- (a) to meet the liquidator at such time and place as the liquidator may request;
- (b) provide the liquidator with such information about the affairs, business, property or financial circumstances of the company as the liquidator may request;
- (c) be examined on oath by the liquidator on any matter relating to the affairs, business, property or financial circumstances of the company, under such evidentiary and other procedural rules as may be prescribed;
- (d) assist the liquidator in the liquidation to the best of the person's ability.

(4) The liquidator shall pay to a person referred to in paragraph (b) of subsection (2), not being an employee of the company, reasonable travel and other expenses that are incurred in complying with a request made under that subsection.

(5) No suit, prosecution or any other legal or other proceeding (including a disciplinary proceeding by any professional body or authority having jurisdiction in respect of professional conduct) shall lie against any person in respect of disclosure in good faith of information under this section.

(6) On the application of the liquidator, the court may order a person who has failed to comply with a request made under this section to –

- (a) comply with the request; or
- (b) attend before the court and be examined on oath, under such evidentiary and other procedural rules as may be prescribed,

where the court is satisfied that such compliance or examination, as the case may be –

- (c) is necessary to further the achievement of the objective referred to in section 296; and
- (d) would not be unreasonably oppressive to the person.

331. (1) A liquidator may require a receivership or appointment of an appointee to end by giving written notice, in such form as may be prescribed, to the receiver or appointee, as the case may be.

Liquidator's
notice that
receivership or
appointment
of appointee
shall end

(2) The receivership or appointment of the appointee, as the case may be, ends at the close of the next working day after the giving of notice under subsection (1).

(3) As soon as practicable after receiving a notice under subsection (1) and in any event by the end of the receivership or of the appointment of the appointee, the receiver or appointee, as the case may be, shall cease to deal with the property in receivership or in respect of which the appointee was appointed.

(4) After a receiver receives a notice under subsection (1) –

- (a) the receiver shall not be required to take any further steps under paragraph (2) of section 382;
- (b) paragraph (b) of subsection (4) of section 385 or paragraph (b) of subsection (4) of section 386 as the case may be, ceases to apply, but any distributions already made thereunder shall not be disturbed on that ground; and
- (c) for the purposes of the Fourth Schedule, the costs, charges and expenses properly incurred by and

the remuneration of the receiver under this Act, and the receiver's indemnity under section 395, shall be treated as an expense of the liquidation.

Execution of
documents by
liquidator

332. (1) A liquidator may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the powers of the liquidator.

(2) A document signed on behalf of a company by a liquidator shall be deemed to have been properly entered into on behalf of the company for the purposes of section 19 of the Companies Act.

(3) Notwithstanding anything to the contrary in any other written law or the articles of a company, where the resolution or order appointing a liquidator empowers the liquidator to execute documents and to use the company's common seal for that purpose, a liquidator may execute documents in the name and on behalf of the company by affixing the company's common seal to the documents and attesting the affixing of the common seal.

(4) A document executed in the manner described in subsection (3) shall be deemed to have been properly entered into by the company for the purposes of section 19 of the Companies Act.

Power of
liquidator
to deal with
property
subject to an
encumbrance

333. (1) A liquidator may exercise or discharge a power or function in relation to property that is subject to an encumbrance where –

- (a) the encumbrance is a fixed security and the property is surrendered under subparagraph (b) of paragraph 1 of the Eighth Schedule or taken to be surrendered under subparagraph (a) of paragraph 4 of that Schedule;
- (b) the encumbrance is a fixed security and paragraph (a) does not apply but the grantee of the

encumbrance has confirmed to the liquidator that it does not intend to enforce the encumbrance;

- (c) the encumbrance is a floating charge;
- (d) the encumbrance is a fixed security ranking behind a floating charge under subsection (2) of section 431 of the Companies Act; or
- (e) the encumbrance is a lien.

(2) Where property is disposed of under subsection (1), the grantee of the encumbrance shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as the grantee had in respect of the property subject to the encumbrance.

334. (1) In this section, “onerous property” means –

Onerous
Property

- (a) an unprofitable contract; or
- (b) property that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), a Bankruptcy Trustee (in a bankruptcy) or a liquidator (in a liquidation) may disclaim onerous property.

(3) A Bankruptcy Trustee or liquidator may not disclaim onerous property where the onerous property presents an imminent and serious risk to public health or public safety, or involves an environmental liability.

(4) A contract may be disclaimed under subsection (2) even if the Bankruptcy Trustee or liquidator has tried to assign it or has exercised rights in relation to it or to any property to which it relates.

(5) Property may be disclaimed under subsection (2) even if the Bankruptcy Trustee or liquidator has taken

possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(6) A disclaimer under subsection (2) –

- (a) brings to an end as from the time of the disclaimer the rights, interests and liabilities of the debtor in relation to the property disclaimed; but
- (b) does not, except so far as may be necessary to release the debtor from a liability, affect or limit the rights or liabilities of any other person.

(7) A Bankruptcy Trustee or liquidator who disclaims onerous property shall, as soon as practicable and in any event within five working days after the disclaimer, give written notice of the disclaimer, containing such information and in such manner as may be prescribed, to each person whose rights are, to the knowledge of the Bankruptcy Trustee or liquidator, as the case may be, affected by the disclaimer.

(8) A person suffering loss as a result of a disclaimer under subsection (2) may –

- (a) claim as a creditor for the amount of the loss, taking account of the effect of an order made under paragraph (b); and
- (b) apply to the court for an order for the disclaimed property be delivered to or vested in that person.

(9) The court may make an order under this section where the court is satisfied that it is just that the property be delivered to or vested in the applicant.

(10) In making an order under this section, the court may, as necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

335. Where a person whose rights would be affected by a disclaimer of onerous property gives the Bankruptcy Trustee in a bankruptcy or the liquidator in a liquidation written notice requiring the Bankruptcy Trustee or the liquidator to elect, before the close of such date as is specified in the notice, not being a date that is less than twenty working days after the day on which the notice is received by the Bankruptcy Trustee or liquidator, whether or not to disclaim the onerous property, the Bankruptcy Trustee or liquidator may not disclaim the onerous property unless the Bankruptcy Trustee or liquidator does so before the close of that date.

Requirement
to elect
whether or not
to disclaim

336. Where a provisional liquidator is appointed by an order made under section 304, the extent to which this Chapter applies to the provisional liquidator and the provisional liquidation, as if references to a liquidator were to the provisional liquidator and references to a liquidation were to the provisional liquidation and with the necessary modifications to paragraph (c) of subsection (6) of section 330, shall be as specified in the order.

Applicability
of this Chapter
in provisional
liquidation

CHAPTER 6

DUTIES OF LIQUIDATOR

A - GENERAL

337. (1) This section applies notwithstanding any other provisions of this Part.

Liquidator not
required to
act in certain
cases

(2) Except where paragraph (a), (b) or (d) of subsection (1) of section 333 applies, a liquidator shall not be required to perform or exercise any function or power in relation to property that is subject to a fixed security.

(3) Where all of the following apply :—

(a) a liquidator is appointed by an order made under paragraph (c) of subsection (2) of section 298;

(b) the Official Receiver shall not be the liquidator;
and

(c) the company is an assetless company,

the liquidator is not required to discharge any duty or exercise any power in connection with the liquidation if to do so would, or would be likely to, involve incurring any expense.

Duty of
liquidator to
investigate
company's
affairs

338. (1) As soon as practicable after the liquidation of a company commences, the liquidator shall –

(a) investigate the company's affairs;

(b) where a declaration has been made and filed under paragraph (b) of subsection (1) of section 302, consider whether or not the company will be able to pay its debts in full within the period specified in the declaration;

(c) subject to subsection (2), consider whether the company may have been a party to a voidable transaction or a transaction at an undervalue, and determine in respect of possible voidable transactions and transactions at an undervalue whether or not it would be in the creditors' interests –

(i) to carry out investigations in relation to them; and

(ii) to apply to the court under section 415 and to seek recovery under section 418.

(2) For so long as section 302 applies to a company, paragraph (c) of subsection (1) shall not apply to the company unless the court orders otherwise on the application of a contributory.

B - CONTRIBUTORIES

339. (1) Subject to subsection (2), as soon as practicable after commencement of a liquidation, the liquidator shall settle a list of contributories.

Settlement
of a list of
contributories

(2) Where the liquidator considers that it will not be necessary to make calls on contributories, the liquidator need not settle a list of contributories.

(3) In settling a list of contributories, the liquidator shall follow such procedure as may be prescribed.

(4) A list of contributories shall comply with such requirements as may be prescribed.

340. (1) A liquidator may vary a list of contributories.

Variation
of a list of
contributories

(2) In varying a list of contributories, the liquidator shall follow such procedure as may be prescribed.

341. (1) As soon as practicable after settling a list of contributories, a liquidator shall, so far as may be necessary for the contributories' liabilities to be rateable, adjust the rights of contributories among themselves.

Adjustment of
the rights of
contributories

(2) In adjusting the rights of contributories among themselves, the liquidator shall follow such procedure as may be prescribed.

342. (1) In this section, "former shareholder", with respect to a company, means a person who was a shareholder at any time within the period of twelve months immediately preceding the date of commencement of its liquidation.

Liability
of former
shareholders

(2) Subject to subsections (3) and (4), where a shareholder fails to pay any amount owing in respect of a share, that amount shall be payable by, and may be recovered by a liquidator from, any former shareholder.

(3) A former shareholder shall not be liable under subsection (2) where, at all times that the former shareholder was a shareholder during the period referred to in subsection (1), the company was able to pay its debts as they had become due in the normal course of business.

(4) Where the liability attached to a share has increased after the time at which it was held by a former shareholder, the liability of the former shareholder under subsection (2) in respect of that share shall not exceed the amount of any liability attached to the share after the time at which it was held by the former shareholder.

Enforcement
of liability of
contributories

343. (1) A liquidator may –

- (a) where a shareholder is liable to a call in respect of uncalled capital, make a call on that shareholder in respect of that uncalled capital; and
- (b) where a contributory is otherwise liable to the company, make a call on that contributory in respect of that liability.

(2) Where the liquidator makes a call under subsection (1), it shall give written notice of the call to the contributory.

(3) A notice under subsection (2) shall comply with such requirements as may be prescribed.

(4) Interest shall be payable on calls at such rate or rates as may be prescribed.

(5) On the application of the liquidator made under subsection (1), the court may order payment of –

- (a) an individual call; or
- (b) multiple calls,

together with interest, if any, payable under subsection (4).

C - APPLICATION OF PROPERTY OF THE COMPANY

344. (1) A liquidator shall apply the proceeds of realisation of property of the company in or towards satisfaction of the claims, determined as at the relevant date, set out in the Fourth Schedule to the extent and in the order of priority specified in that Schedule. Preferential
claims

(2) Without prejudice to paragraph 9 of the Fourth Schedule “property of the company” in subsection (1) shall not include property subject to an encumbrance unless paragraph (a), (b), (c), (d) or (e) of subsection (1) of section 333 applies.

(3) After paying claims in accordance with subsection (1), the liquidator shall apply the proceeds of realisation of property of the company in or towards the satisfaction of general claims, determined as at the relevant date, paying all general claims at the same time.

(4) The claims referred to in subsection (3) rank equally among themselves and shall be satisfied in full unless the proceeds of realisation of property of the company are insufficient to satisfy them, in which case the proceeds shall abate rateably among all such claims.

(5) After paying claims in accordance with subsection (3), interest as from the relevant date calculated in such manner as may be prescribed shall be paid on the claims referred to in subsections (1) and (3).

(6) The claims referred to in subsection (5) rank equally among themselves with respect to the interest referred to in that subsection, and such interest shall be paid in full unless the proceeds of realisation of property of the company are insufficient to pay it, in which case the proceeds shall abate rateably among all of the claims referred to in that subsection with respect to that interest.

(7) After paying claims in accordance with subsection (5), the liquidator –

- (a) subject to paragraph (b), shall apply the surplus proceeds of realisation of the property of the company in accordance with subsection (8);
- (b) may distribute surplus unrealised property of the company in accordance with subsection (8) instead of realising that property and applying the proceeds under paragraph (a) where the articles of the company permit its distribution; or
- (c) both of the following are first obtained –
 - (i) a decision of the shareholders, by special resolution, that the property should be distributed; and
 - (ii) permission of the court, on the application of the liquidator, for the distribution of the property.

(8) Any application of surplus proceeds or distribution of surplus property under subsection (7) is to be –

- (a) in the order of priority provided for in the articles of the company; or
- (b) in the absence of such provision, to the shareholders rateably.

(9) Where, before the commencement of a liquidation, a creditor has agreed to accept a lower priority in respect of a debt than that which it would otherwise have accepted under this section, nothing in this section shall prevent the agreement from having effect according to its terms.

D - DUTIES TO REPORT

Duty of
liquidator
to report
misfeasance

345. (1) Where a liquidator believes, or has reasonable grounds to believe, that an involved party has misapplied or retained or become liable or accountable for money or other property of the company, or been guilty of negligence,

default or breach of duty or trust in relation to the company, the liquidator shall as soon as practicable report the matter to the Registrar and Authority.

(2) In any case where a liquidator makes a report under subsection (1), the liquidator shall give to the Registrar and Authority such assistance as the Registrar or Authority, as the case may be, may reasonably request by way of –

- (a) provision of information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(3) A liquidator who fails to comply with subsection (1) or subsection (2) commits an offence.

346. (1) Where a liquidator believes, or has reasonable grounds to believe, that the company or any involved party has committed an offence under –

Duty of
liquidator to
report offence
committed

- (a) this Act;
- (b) the Companies Act; or
- (c) the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021,

the liquidator shall as soon as practicable report the matter to the Registrar and Authority.

(2) The Registrar and Authority shall refer a matter reported under subsection (1) to the appropriate law enforcement authority.

(3) In any case where a liquidator makes a report on a matter under subsection (1) that is reported to a law enforcement authority under subsection (2), the liquidator

shall give to the authority such assistance as the authority may require by way of –

- (a) provision of information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(4) Nothing in this section shall affect or limit any duty imposed on a liquidator under any other enactment.

(5) A liquidator who fails to comply with subsection (1) or subsection (3) commits an offence.

Duty of
liquidator to
prepare
misfeasance

347. (1) A liquidator or a person who was a liquidator at the end of the liquidation, as the case may be, shall prepare an account for each of the following periods :–

- (a) the period of six months or a lesser period as the liquidator may determine, immediately after the appointment of the liquidator;
- (b) each subsequent period of six months during which the liquidator holds office; and
- (c) the period between the last period of the kind referred to in paragraph (b) of subsection (1) and the day on which the liquidator vacates office.

(2) Within twenty working days after the end of the period in question referred to in subsection (1), the person shall –

- (a) in such manner as may be prescribed, send to each known creditor and contributory the account referred to in subsection (1); and
- (b) send a copy of the account to the Registrar and Authority.

(3) The account referred to in subsection (1) shall be in such form as may be prescribed and shall –

- (a) show, for each period, the liquidator’s receipts and payments;
- (b) show, for each period except the first, the aggregate of the liquidator’s receipts and payments since the day on which the liquidator was appointed; and
- (c) where the Official Receiver is not the liquidator and except in the case of the account referred to in paragraph (c) of subsection (1), contain an updated interests statement, signed by the liquidator, that complies with section 30.

(4) Where a special manager has been appointed under subsection (1) of section 358 the person shall include the special manager’s account or accounts in the corresponding account or accounts referred to in subsection (1).

(5) Every person who fails to comply with this section commits an offence.

348. (1) This section applies to a person who was a liquidator at the end of a liquidation.

Duty of
liquidator
to report
misfeasance

(2) As soon as practicable after performing all of the person’s other duties in relation to the liquidation, and in any event within twenty working days after the end of the liquidation, the person shall –

- (a) prepare a final report containing such information as may be prescribed and a statement that –
 - (i) all of the property of the company as at the commencement of the liquidation has been realised, distributed or disclaimed;

(ii) the proceeds of realisation have been distributed to the extent practicable; and

(iii) the company is to be dissolved;

(b) in such manner as may be prescribed, send to each known creditor and contributory the documents referred to in paragraph (a); and

(c) send a copy of the documents to the Registrar and Authority.

(3) Every person who fails to comply with this section commits an offence.

E - DISSOLUTION

Dissolution

349. (1) Subject to subsection (2), a company shall be dissolved at the expiry of three months after compliance with paragraph (c) of subsection (2) of section 348.

(2) On the application of an interested person, the court may direct that the date of dissolution of the company shall be deferred for such time as may be necessary.

(3) In making an order under subsection (2) the court may, where necessary, make any other ancillary order.

(4) A copy of every order made under subsection (2) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

F - MISCELLANEOUS DUTIES

Duty of liquidator in relation to money

350. (1) Subject to subsections (2) and (3), and to any order that the court may make, a liquidator shall forthwith pay all money received by the liquidator into an account or accounts established for the purpose at one or more banks.

(2) A liquidator shall not pay any money received into a personal bank account of the liquidator.

(3) A liquidator may invest money received in the course of the liquidation in financial products, to such extent if any, and subject to such terms and conditions as may be prescribed.

(4) A liquidator who fails to comply with this section commits an offence under this section and shall be liable on conviction to a fine not less than one million rupees and not exceeding two million five hundred thousand rupees or to rigorous imprisonment for a term not exceeding five years or to both such a fine and imprisonment.

(5) Where a liquidator commits an offence in relation to subsection (2), in addition to any fine or imprisonment that may be imposed, the court shall levy the money paid in contravention of subsection (2) together with any interest or profits earned thereon, which shall –

- (a) be recovered in the same manner as a fine; and
- (b) unless the court orders otherwise, be paid into an account established under subsection (1).

351. (1) A liquidator shall make accounting records that correctly record and explain, in relation to the period of the liquidation, all receipts, payments and other transactions relating to the property and undertaking of the company.

Duty of
liquidator in
relation to
accounting
records

(2) On an application to the court by an interested person, the court may order that the applicant may inspect the accounting records referred to in subsection (1) on such terms and conditions as may be necessary.

(3) The accounting records referred to in subsection (1) shall be retained by the liquidator for at least six years after the liquidation ends.

(4) A liquidator who fails to comply with this section commits an offence.

G - DUTIES IN PROVISIONAL LIQUIDATION

Applicability
of this Chapter
in provisional
liquidation

352. Where a provisional liquidator is appointed by an order made under section 304, the extent to which this Chapter applies to the provisional liquidator and the provisional liquidation, as if references to a liquidator were to the provisional liquidator and references to a liquidation were to the provisional liquidation, shall be as may be specified in the order.

CHAPTER 7

REMUNERATION OF LIQUIDATOR

Remuneration
of liquidator
other than
the Official
Receiver

353. (1) Subject to paragraph (b) of subsection (1) of section 361, a liquidator other than the Official Receiver shall be entitled to receive remuneration on one or more bases and at one or more hourly and percentage rates and fixed levels –

- (a) where section 302 applies to the company, as may be agreed by the shareholders, in such manner as may be prescribed;
- (b) where section 302 does not apply to the company, as may be agreed by the creditors, in such manner as may be prescribed; or
- (c) as may be determined by the court, in the absence of agreement by the shareholders or creditors under the preceding paragraphs of this subsection.

(2) A liquidator other than the Official Receiver shall, in addition to remuneration, be entitled to the reasonable costs of storage of such records as are required under subsection (3) of section 351 to be retained.

CHAPTER 8

LIABILITY OF LIQUIDATOR, PROVISIONAL LIQUIDATOR AND SPECIAL MANAGER

354. (1) The court may relieve a person who has acted as a liquidator, provisional liquidator or special manager from liability incurred in the course of the liquidation or provisional liquidation, as the case may be, where the court is satisfied that –

Relief from liability in the event of a defect

- (a) the liability was incurred solely by reason of a defect in the resolution or order appointing the liquidator, provisional liquidator or special manager, as the case may be; and
- (b) the liquidator, provisional liquidator or special manager, as the case may be, acted honestly and reasonably and should in the circumstances be exempted from liability.

(2) The court may exercise its powers under subsection (1) subject to such terms and conditions as may be necessary.

CHAPTER 9

LIQUIDATION – MISCELLANEOUS

355. (1) Where the creditors by resolution at an outcome meeting appoint a liquidator under paragraph (b) of subsection (2) of section 214 or a liquidator of a company in administration is otherwise appointed, and subject to section 438, the person who was the administrator at the end of the administration (if that person is not the liquidator who has been appointed) shall –

Provision of information and assistance by administrator or receiver to liquidator

- (a) forthwith do all that is necessary to put the liquidator in control of the affairs, business and property of the company;

(b) as soon as practicable –

(i) provide the liquidator with a copy of all accounting records made by the administrator under section 245; and

(ii) deliver to the liquidator any other documents in the possession or custody or under the control of the administrator relating to the administration.

(2) Subject to sections 322 and 438, where the liquidation of a company in receivership commences, the receiver shall –

(a) forthwith do all that is necessary to put the liquidator in control of the affairs, business and property of the company;

(b) as soon as practicable –

(i) provide the liquidator with a copy of all accounting records made by the receiver under section 388; and

(ii) deliver to the liquidator any other documents in the possession or custody or under the control of the receiver relating to the receivership.

Vacancy in
the office of
liquidator

356. (1) The office of liquidator shall become vacant if the person holding that office –

(a) resigns office under subsection (2);

(b) dies;

(c) is removed from office by the court;

- (d) has ones registration as an Insolvency Practitioner been suspended or cancelled; or
- (e) sends a final report under section 348.

(2) A liquidator may resign office by giving five working days' written notice in such manner as may be prescribed, and the liquidator's intention to resign, is conveyed to –

- (a) the liquidator's appointer and, where the appointer was the court, the person on whose application the appointment was made; and
- (b) the creditors.

(3) The appointer of a liquidator may appoint a replacement liquidator to fill a vacancy in the office of liquidator, subject to –

- (a) any order of the court; and
- (b) the requirements under this Part applicable to the appointment of a liquidator.

(4) On the application of a person referred to in subsection (5), the court may make an order where for any reason the office of liquidator is vacant –

- (a) appointing a suitable replacement liquidator; or
- (b) specifying a process for the appointment of a suitable replacement liquidator.

(5) Any of the following persons may make an application to the court under subsection (4) –

- (a) a creditor;
- (b) a contributory;

- (c) any other person with an interest in the company;
- (d) the Registrar; or
- (e) the Authority.

(6) Where a vacancy occurs in the office of liquidator other than under paragraph (e) of subsection (1), written notice of the vacancy shall, as soon as practicable, be given to the Registrar and Authority by the person vacating office or, if that person is unable to act, by the person's legal representative.

(7) A person vacating the office of liquidator other than under paragraph (c) of subsection (1) shall, where practicable, provide such information and give such assistance to the person's successor as the successor may reasonably request.

(8) On the application of a person appointed to fill a vacancy in the office of liquidator, the court may make any order that the court considers necessary to facilitate the performance, exercise and discharge of the liquidator's functions, powers and duties.

(9) Every person who fails to comply with either subsection (6) or (7) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

(10) Every person who fails to comply with any court order made in terms of subsection (8) commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand rupees.

Release of
liquidator or
provisional
liquidator

357. (1) Where a person ceases to be a liquidator or provisional liquidator, the person shall be released where –

- (a) in a case where section 302 applies to the company –

- (i) notice has been given to each shareholder, in such manner and enclosing such documents as may be prescribed, of the release sought and explaining how shareholders may object to it; and
 - (ii) the shareholders do not object in such manner and within such period as may be prescribed; or
- (b) in a case where section 302 does not apply to the company –
 - (i) notice has been given to each known creditor, in such manner and enclosing such documents as may be prescribed, of the release sought and explaining how creditors may object to it; and
 - (ii) the creditors do not object in such manner and within such period as may be prescribed; or
- (c) after such procedure as may be prescribed has been followed, the court grants permission.

(2) A release under subsection (1) shall discharge the person from all liability, except liability under section 419, in respect of any act, omission or decision of the person in the liquidation or provisional liquidation, as the case may be, of the company.

(3) Where a person has obtained a release under subsection (1), the person shall give written notice of the release to the Authority within ten working days.

358. (1) On the application of a liquidator or provisional liquidator, the court shall make an order appointing a special manager, where the court is satisfied that the condition in subsection (2) is met.

Appointment
of a special
manager

(2) The condition referred to in subsection (1) is that the nature of the affairs, business or property of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager.

(3) In deciding whether or not the condition in subsection (2) is met, the court shall have regard to whether or not the applicant can exercise a reasonable level of personal control over the entirety of the affairs, business or property of the company.

(4) In making an order under subsection (1) the court may, as may be necessary, make any other ancillary order.

(5) A special manager appointed by an order made under subsection (1) shall –

- (a) act during such time as may be specified in the order, which may be –
 - (i) for a fixed period;
 - (ii) until the occurrence of a specified event; or
 - (iii) until the court makes a further order;
- (b) have such powers and duties as may be specified in the order;
- (c) prepare such accounts as may be prescribed;
- (d) send the accounts referred to in paragraph (c) to such persons, in such manner, and within such periods as may be prescribed; and
- (e) be entitled to receive such remuneration as may be determined by the court.

(6) A special manager appointed by an order made under subsection (1) shall be an officer of the court.

(7) The appointment of a special manager shall not take effect until the person to be appointed has given the applicant security, for the appointment, that complies with such requirements as may be prescribed.

(8) A special manager shall, as soon as practicable and in any event within five working days after being appointed, give notice of the appointment to such persons and in such manner as may be prescribed.

(9) The appointment of a special manager may be terminated by the court on the application of –

- (a) the special manager;
- (b) a provisional liquidator; or
- (c) a liquidator.

(10) A liquidator or provisional liquidator, whichever holds office, shall apply to the court for an order terminating the appointment of a special manager where –

- (a) section 302 applies to the company and the shareholders decide, by special resolution, that the appointment should be terminated; or
- (b) section 302 does not apply to the company and the creditors decide, by resolution, that the appointment should be terminated.

(11) On an application under subsection (9), the court may –

- (a) may make an order terminating the appointment of the special manager; and
- (b) in making such an order, may, as may be necessary, make any other ancillary order.

(12) Within five working days after the appointment of a special manager terminates, the special manager shall give notice of the termination to such persons and in such manner as may be prescribed.

Stamp duty
exemption

359. During the liquidation of a company –

- (a) every deed relating solely to immovable property, or to any estate, right or interest in, any movable or immovable property, that forms part of the property of the company both before and after execution of the deed; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other written instrument relating solely to –
 - (i) the property of the company; or
 - (ii) any legal process or other legal proceeding that is part of the liquidation,

shall be exempt from stamp duty.

CHAPTER 10

POWERS OF THE COURT IN LIQUIDATION AND PROVISIONAL LIQUIDATION

Application
for directions
by a liquidator
or provisional
liquidator

360. (1) On the application of a liquidator or provisional liquidator or the Authority, the court may –

- (a) give directions in relation to any matter arising in connection with the exercise, perform, discharge of any of the powers, functions and duties of the liquidator or provisional liquidator, as the case may be; or
- (b) revoke or vary any such directions.

(2) The powers conferred under subsection (1) –

- (a) shall be addition to any other powers the court may exercise; and
- (b) may be exercised whether or not the liquidator or provisional liquidator, as the case may be, has ceased to act as such when the application is made.

(3) It is a defence to a claim against a liquidator or provisional liquidator, in relation to any act, omission or decision of the liquidator or provisional liquidator, as the case may be, that the liquidator or provisional liquidator, as the case may be, acted in compliance with a direction given under subsection (1).

361. (1) On the application of a person referred to in subsection (2), the court may –

Court
supervision of
liquidators and
provisional
liquidators
and order
regarding
remuneration
or
appointment
of liquidator

- (a) confirm, reverse or modify an act or decision of a liquidator or provisional liquidator;
- (b) in respect of any period or activity for which the remuneration of a liquidator other than the Official Receiver has not been determined under Subsection (1) of section 353, fix such remuneration at a level that is reasonable in the circumstances; or
- (c) declare whether or not a liquidator was validly appointed.

(2) Any of the following persons may make an application to the court under subsection (1) –

- (a) the liquidator or a person to be appointed as liquidator;
- (b) a provisional liquidator;

- (c) an administrator or deed administrator;
- (d) a receiver;
- (e) a creditor;
- (f) a contributory;
- (g) any other person with an interest in the company;
- (h) with respect to paragraph (c) of subsection (1),
the Registrar; or
- (i) the Authority.

(3) The powers conferred under subsection (1) may be exercised whether or not the liquidator or provisional liquidator, as the case may be, has ceased to act as such when the application is made.

Court's
general power
in liquidation
and
provisional
liquidation

362. (1) On the application of a person referred to in subsection (2), the court may make any order that it considers necessary regarding the manner in which the provisions of this Part XII are to be applied in relation to a particular company.

(2) Any of the following persons may make an application to the court under subsection (1) :—

- (a) the liquidator or a person to be appointed as liquidator;
- (b) a provisional liquidator;
- (c) a special manager;
- (d) an administrator or deed administrator;
- (e) a receiver;
- (f) a creditor;
- (g) a contributory;

- (h) any other person with an interest in the company;
- (i) the Registrar;
- (j) the Authority; or
- (k) with the permission of the court, any other interested person.

(3) In an order under subsection (1), the court may end a liquidation where it is satisfied that the liquidation should end because –

- (a) the provisions of this Part are being abused;
- (b) in the case of a liquidation that has been suspended under subsection (4) of section 188 owing to the appointment of an administrator, the administration has been ended or will end (with or without a deed of company arrangement having been made) and the company is not insolvent or likely to become insolvent; or
- (c) for some other reason, it is just and equitable that the liquidation be ended.

(4) A copy of every order made under subsection (3) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

(5) In making an order under subsection (1), the court may, as may be necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

363. (1) In this section, “failure to comply”, with respect to a liquidator or provisional liquidator, means a failure (by act or omission) by the liquidator or provisional liquidator, as the case may be, to comply with a duty arising –

Order to
enforce
liquidator’s
or provisional
liquidator’s
duties

- (a) under this Act or any other written law; or
- (b) under any order or direction of the court, except an order to comply made under this section,

and “comply” shall have the corresponding meaning.

(2) On the application of a person referred to in subsection (3), and where the court is satisfied that there is or has been a failure to comply, the court may –

- (a) without prejudice to any other right or remedy that may be available in relation to a breach of duty, order the liquidator or provisional liquidator, as the case may be, to comply with the applicable duty so far as may be specified in the order; or
- (b) relieve the liquidator or provisional liquidator, as the case may be, of the duty to comply with the applicable duty, wholly or in part.

(3) Any of the following persons may make an application to the court under subsection (2) :-

- (a) a receiver;
- (b) a creditor;
- (c) a contributory;
- (d) any other person with an interest in the company;
- (e) an administrator or deed administrator;
- (f) the Registrar; or
- (g) the Authority.

(4) No application may be made under subsection (2) unless notice of the failure to comply has been served on the liquidator or provisional liquidator, as the case may be, at least ten working days before the application and, as at the date of the application, there is a continuing failure to comply.

(5) A copy of every order made under paragraph (a) of subsection (2) shall, within five working days after the making of the order, be sent by the court to the Authority.

364. (1) On the application of a person referred to in subsection (3) of section 363 and where the court is satisfied that –

Removal of liquidator or provisional liquidator from office by court

- (a) a liquidator or provisional liquidator has failed to comply with an order made under paragraph (a) of subsection (2) of section 363; or
- (b) a liquidator has ceased to be permitted under section 312 to be appointed or act as liquidator,

the court may make an order removing the liquidator or provisional liquidator, as the case may be, from office and make any other ancillary order.

(2) A copy of every order made under subsection (1) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

365. (1) At any time after the making of an application under paragraph (c) of subsection (2) of section 298 and pending determination of the application, the company or any creditor or contributory may, where an application or proceeding against the company or any of its property is pending in a court, apply to that court to stay or restrain the application or proceeding.

Power to stay or restrain application or proceeding

(2) On an application under subsection (1), the court may stay or restrain the application or proceeding on such terms and conditions as may be necessary.

366. While a company is in liquidation or in provisional liquidation, on the application of the Registrar or the Authority, the court may make any order as may be necessary to protect the interests of the creditors as a whole.

Order to protect creditors in liquidation or provisional liquidation

PART XIII

Receivership

CHAPTER 1

INTERPRETATION

Interpretation

367. In this Part and in the Tenth Schedule, unless the context otherwise requires, “grantor” means a company in respect of the property of which a receiver is or may be appointed.

CHAPTER 2

APPOINTMENT OF RECEIVER

Instrument
may confer
power to
appoint
receiver

368. An instrument that creates a floating charge in respect of the whole, or substantially the whole, of the property and undertaking of a company may confer on the grantee the power to appoint a receiver of the property and undertaking of the company.

When
receivership
commences

369. The receivership of a company commences on the day on which, and at the time at which, a receiver other than a replacement receiver is appointed under this Part.

Who may be
appointed and
act as receiver

370. (1) A person may be appointed or act as receiver of property of a company only if the person –

- (a) is qualified under section 12 to be appointed and act as a key office holder with respect to the receivership;
- (b) is not disqualified under section 371 from being appointed or acting as a receiver;
- (c) has certified in writing that the person –

- (i) is qualified under section 12 to be appointed and act as a key office holder with respect to the receivership; and
- (ii) is not disqualified under section 371 from being appointed or acting as a receiver; and
- (d) has consented in writing to the appointment and has not withdrawn the consent at the time of appointment.

(2) A person who, with the person's consent, is appointed or acts as receiver of property of a company knowing that any of the requirements of paragraphs (a), (b) and (c) of subsection (1) has not been met, commits an offence.

371. (1) The following persons and their related parties are disqualified from being appointed or acting as a receiver of property of a company :-

Disqualifications
from being
appointed or
acting as receiver

- (a) a creditor of the company;
- (b) a person who is or who has within the period of two years immediately preceding the date of commencement of the receivership, been –
 - (i) a director or other officer or an auditor or employee of the company or of a related company; or
 - (ii) a director or other officer or employee of a grantee of the property in receivership;
- (c) a person who has or who has had within the period of two years preceding the date of commencement of the receivership –
 - (i) a direct interest in a share issued by the company or by a related company; or

(ii) an indirect interest in five per cent or more of any class of shares issued by the company or by a related company; or

(d) where a receiver is to be appointed under an instrument under subsection (1) of section 372, a person who is not permitted under the instrument to be appointed or act as receiver.

(2) A person who is appointed or acts as a receiver when disqualified under subsection (1) commits an offence.

Appointment
of receiver
under an
instrument

372. (1) Where an instrument confers on the grantee the power to appoint a receiver of property of a company, the grantee may appoint a receiver by an instrument in writing signed by or on behalf of the grantee.

(2) A receiver appointed under an instrument shall be the agent of the grantor, unless the instrument expressly provides otherwise.

(3) A receiver may be appointed under subsection (1) –

(a) notwithstanding anything to the contrary in any other written law; and

(b) whether or not the property in receivership includes immovable property.

(4) Unless the instrument expressly provides otherwise, a power conferred by an instrument to appoint a receiver includes the power to appoint –

(a) two or more receivers;

(b) a receiver in addition to a receiver who already holds office;

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

(5) Where two or more persons are appointed as receivers under an instrument –

- (a) a receiver's functions and powers may be performed or exercised by any one of them, or by any two or more of them together, except so far as the instrument provides otherwise;
- (b) any liability of the persons as receivers shall be joint and several; and
- (c) a reference in this Act to a receiver refers to whichever one or more of the receivers as the case requires.

(6) For the avoidance of doubt –

- (a) the appointment of a receiver under this section is not a hypothecary action; and
- (b) nothing in section 46 of the Mortgage Act (Chapter 89) shall affect or shall apply in relation to the appointment of a receiver under this section.

373. (1) Without prejudice to any other power the court may exercise under any other enactment, the court may appoint a receiver of any property that is subject to a fixed security or floating charge granted by a company, on the application of the grantee of the fixed security or floating charge, as the case may be, where the court is satisfied that –

Court may
appoint a
receiver

- (a) the company has failed to pay a debt owing to the grantee or has otherwise failed to meet any obligation owing to the grantee;
- (b) the company proposes to sell or otherwise dispose of the secured property in contravention

of the terms of any instrument creating the fixed security or floating charge, as the case may be; or

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

(2) A receiver appointed by an order made under subsection (1) shall be an officer of the court.

(3) A receiver may be appointed under subsection (1) –

- (a) notwithstanding anything to the contrary in any other written law; and
- (b) whether or not the property in receivership includes immovable property.

(4) For the avoidance of doubt –

- (a) the appointment of a receiver under this section is not a hypothecary action; and
- (b) nothing in section 46 of the Mortgage Act (Chapter 89) shall affect or shall apply in relation to the appointment of a receiver under this section.

Notice of
receiver's
appointment
and details

374. (1) A receiver shall as soon as practicable and in any event within five working days after being appointed –

- (a) give written notice of the receiver's appointment to the grantor;
- (b) give public notice of the receiver's appointment, including —
 - (i) the receiver's full name;
 - (ii) the date of the appointment;

- (iii) the identity of the appointer of the receiver and, where the appointer was the court, the identity of the person on whose application the appointment was made;
 - (iv) the receiver's office address; and
 - (v) a brief description of the property in receivership; and
- (c) send a copy of the public notice to the Registrar and Authority.

(2) Where the appointment of a receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, each notice under subsection (1) shall state that fact.

(3) In the event of any change in a receiver's office address, the receiver shall within five working days –

- (a) give public notice of the new address; and
- (b) send a copy of the public notice to the Registrar and Authority.

(4) A failure to comply with this section shall not affect the validity of a person's appointment as receiver.

(5) A receiver who fails to comply with this section commits an offence.

375. (1) For so long as a receiver holds office, the receiver shall ensure that –

Documents
to refer to
appointment
of receiver

- (a) every document issued or signed by or on behalf of the grantor or the receiver and on which the name of the grantor appears shall state, where the name first appears, that a receiver has been appointed; and

- (b) if the company has one or more websites, each page of each website shall state prominently that a receiver has been appointed.

(2) For so long as a receiver holds office in respect of a specific asset, the receiver –

- (a) shall ensure that every document issued or signed by or on behalf of the grantor or the receiver that relates to the asset and on which the name of the grantor appears shall state clearly that a receiver has been appointed; and
- (b) shall require the company to ensure that if the company has one or more websites, each page of each website shall state prominently that a receiver has been appointed in respect of a specific asset of the company.

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

- (a) a person's appointment as receiver; or
- (b) any document.

(4) Every person who –

- (a) fails to comply with subsection (1) or (2); or
- (b) abets or is concerned in a failure to comply with subsection (1) or (2),

commits an offence.

CHAPTER 3

POWERS OF RECEIVER

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

Powers of
receiver

(2) Subject to the instrument or the order of the court by or under which the appointment was made, a receiver shall have and may exercise the powers specified in the Tenth Schedule.

(3) Subject to the instrument or the order of the court by or under which the appointment was made, a receiver may exercise the receiver's powers and authorities to the exclusion of the powers of the company's directors or those of the grantor.

377. (1) A receiver may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the receiver's powers.

Execution of
documents by
receiver

(2) A document signed on behalf of a company by a receiver shall be deemed to have been properly entered into on behalf of the company for the purposes of section 19 of the Companies Act.

(3) Notwithstanding anything to the contrary in any other written law or the articles of a company, where the instrument or the order of the court by or under which a receiver is appointed empowers the receiver to execute documents and to use the company's common seal for that purpose, a receiver may execute documents in the name and on behalf of the company by affixing the company's common seal to the documents and attesting the affixing of the common seal.

(4) A document executed in the manner described in subsection (3) shall be deemed to have been properly entered

into by the company for the purposes of section 19 of the Companies Act.

Precedence
among
receivers

378. (1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Part by virtue of each such charge.

(2) A receiver appointed by or on the application of the grantee of a floating charge, where that charge has priority over any other floating charge by virtue of which a receiver has been appointed in terms of the powers conferred on a receiver, that receiver shall have priority to the exclusion of any other receiver notwithstanding anything to the contrary prior.

(3) Where two or more floating charges rank equally with one another, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers.

(4) Receivers deemed to have been appointed as joint receivers shall act jointly unless any of the instruments of appointment provides otherwise.

(5) Subject to subsection (6), the powers of a receiver appointed by or on the application of the grantee of a floating charge are suspended by, and as from the time of the appointment of a receiver by or on the application of the grantee of a floating charge having priority over that charge, so far as necessary to enable the receiver second mentioned to exercise the powers of that receiver conferred by this Act, and any powers so suspended shall take effect again when the floating charge having priority ceases to attach to the property then subject to the charge, or when the appointment of a receiver under the floating charge having priority ceases in respect of that property, whichever occurs first.

(6) The suspension of the powers of a receiver under subsection (5) does not have the effect of requiring the receiver to release any part of the property of the company from the receiver's possession, custody or control, unless and until the receiver receives from the superseding receiver a valid indemnity (subject to the limit of the value of such part of the property as is subject to the charge by virtue of which the receiver was appointed) in respect of any liability of the receiver that may properly have been incurred in the performance, exercise and discharge of the receiver's functions, powers and duties.

(7) The suspension of the powers of a receiver under subsection (5) shall not cause the floating charge by virtue of which the receiver was appointed to cease to attach to the property in respect of which that receiver was appointed.

(8) Nothing in this section shall prevent the same receiver being appointed by virtue of two or more floating charges.

379. (1) Where a receiver is appointed in respect of property of a company, every director and other officer of the company shall –

Requirement
to provide
information to
receiver

- (a) as soon as practicable and in any event within five working days after the appointment make available to the receiver all books, records and documents relating to the property in receivership in the person's possession or custody or under the person's control;
- (b) if required to do so by the receiver, verify by affidavit within a reasonable period that the books, records and documents are complete and correct;
- (c) if the company has a common seal, promptly make the common seal available for use by the receiver; and

- (d) give the receiver such assistance as the receiver may reasonably request.

(2) On the application of a receiver, the court may make an order requiring a director or other officer of the company to comply with subsection (1).

(3) A verification under paragraph (b) of subsection (1) may be qualified in relation to specific matters dealt with in the books, records and documents where the person giving the verification does not –

- (a) consider the books, records and documents to be complete and correct; or
- (b) have the knowledge necessary to give a verification.

Consent of
grantee to sale
of property

380. (1) Where the consent of a grantee is required for the sale of property in receivership and a receiver is unable to obtain that consent, the receiver may apply to the court for an order authorising the sale of the property, either by itself or together with other property.

(2) On an application under subsection (1), the court may make such order as may be necessary, authorising the sale of the property by the receiver, where the court is satisfied that –

- (a) the receiver has made reasonable efforts to obtain the grantee's consent; and
- (b) the sale –
 - (i) is in the interests of the grantor and the grantor's creditors; and
 - (ii) will not materially adversely affect the interests of the grantee.

(3) In making an order under subsection (2), the court may, as necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

381. (1) Subject to subsection (2) and unless the court orders otherwise, a receiver may be appointed and act as receiver, and exercise all of the powers of a receiver, in respect of property of a company that is in liquidation.

Powers of
receiver on
liquidation

(2) A receiver who holds office in respect of property referred to in subsection (1) may not act as the agent of the grantor except –

- (a) with the prior, written consent of the liquidator;
or
- (b) with the permission of the court.

(3) A receiver who by reason of subsection (2) is not able to act as the agent of the grantor is not solely by reason of that fact the agent of a person by whom or in whose interests the receiver was appointed.

(4) The liquidator shall not be liable in damages for declining to give consent under paragraph (a) of subsection (2).

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

CHAPTER 4

DUTIES OF RECEIVER

General duties
of receivers

382. (1) The receiver shall exercise the receiver's powers in good faith.

(2) The receiver shall exercise the receiver's powers in a manner that the receiver believes on reasonable grounds to be in the interests of the person in whose interests the receiver was appointed.

(3) Without prejudice to subsections (1) and (2), the receiver shall exercise the receiver's powers having reasonable regard to the interests of –

(a) the grantor;

(b) creditors of the grantor; and

(c) any other persons claiming, through the grantor, interests in the property in receivership.

(4) A receiver appointed under an instrument under subsection (1) of section 372 shall not be bound to act in accordance with such directions of the person in whose interests the receiver was appointed, and any failure to act in accordance with such directions shall not be regarded as a breach of the duty referred to in subsection (2).

(5) Nothing in this section shall affect or limit the application of section 383.

Duty of
receiver
in selling
property

383. A receiver who exercises a power of sale of property in receivership owes a duty to the persons referred to in subsection (3) of section 382 to obtain the best price reasonably obtainable as at the time of sale.

384. (1) Notwithstanding anything to the contrary in any other written law or anything in an instrument under which a receiver is appointed –

No defence or
indemnity

- (a) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by section 383 that the receiver was acting as the grantor’s agent or under a power of attorney from the grantor;
- (b) the receiver shall not be entitled to compensation or indemnity from the property in receivership or the grantor in respect of any liability incurred by the receiver arising from a breach of the duty imposed by section 383.

385. (1) This section shall apply to a receiver who was appointed by virtue of a fixed security.

Order of
priority where
fixed security
receiver
appointed

(2) In this section, “applicable fixed security” means the security by virtue of which the receiver was appointed.

(3) Subject to sections 234 and 331 and to the rights of the persons referred to in subsection (4), a receiver to whom this section applies shall apply the proceeds of realisation of the property in receivership in or towards satisfaction of the debt, determined as at the relevant date, secured by the applicable fixed security.

(4) The following persons shall be entitled to distributions of the proceeds of realisation of the property in receivership in priority to the grantee of the applicable fixed security, and in the order of priority in which they are listed –

- (a) first, if the company is in liquidation, the liquidator, for any costs reasonably incurred by the liquidator in preserving and realising the property in receivership;

- (b) second, the receiver, for the costs, charges and expenses properly incurred by and the remuneration of the receiver under this Act; and
- (c) third, the grantee of any fixed security over any part of the property that ranks prior to –
 - (i) the applicable fixed security; and
 - (ii) any floating charge, for any debt owing to that grantee, determined as at the relevant date; and
- (d) where the applicable fixed security ranks below a floating charge over any part of the property under subsection (2) of section 431 of the Companies Act, and without affecting or limiting paragraphs (a), (b) and (c) of this subsection –
 - (i) fourth, the persons having preferential claims, in or towards satisfaction of their claims, determined as at the relevant date, set out in paragraphs 1, 2 and 8 of the Fourth Schedule, to the extent and in the order of priority specified in that Schedule, except such costs, charges and expenses as are referred to in paragraphs (a) and (b) of this subsection;
 - (ii) fifth, the grantee of the floating charge, for any debt owing to that grantee, determined as at the relevant date; and
 - (iii) sixth, the grantee of any fixed security over any part of the property that ranks prior to the applicable fixed security but below the floating charge under subsection (2) of section 431 of the Companies Act, for any debt owing to that grantee, determined as at the relevant date.

(5) After the debt secured by the applicable fixed security has been satisfied in full, any further distribution of the proceeds of realisation of the property in receivership shall be made to the company or, if the company is in liquidation, to the liquidator.

386. (1) This section applies to a receiver who was appointed by virtue of a floating charge.

Order of
priority where
floating charge
receiver
appointed

(2) In this section, “applicable floating charge” means the charge by virtue of which the receiver was appointed.

(3) Subject to sections 234 and 331 and to the rights of the persons referred to in subsection (4), a receiver to whom this section applies shall apply the proceeds of realisation of the property in receivership in or towards satisfaction of the debt, determined as at the relevant date, secured by the applicable floating charge.

(4) The following persons shall be entitled to distributions of the proceeds of realisation of the property in receivership in priority to the grantee of the applicable floating charge, and in the order of priority in which they are listed –

- (a) first, if the company is in liquidation, the liquidator, for any costs reasonably incurred by the liquidator in preserving and realising the property in receivership;
- (b) second, the receiver, for the costs, charges and expenses properly incurred by and the remuneration of the receiver under this Act;
- (c) third, the grantee of any fixed security over any part of the property that ranks prior to the applicable floating charge, for any debt owing to that grantee, determined as at the relevant date;
- (d) fourth, the persons having preferential claims, in or towards satisfaction of their claims,

determined as at the relevant date, set out in paragraphs 1, 2 and 8 of the Fourth Schedule, to the extent and in the order of priority specified in that Schedule, except such costs, charges and expenses as are referred to in paragraphs (a) and (b) of this subsection; and

- (e) fifth, the grantee of any floating charge over any part of the property that ranks prior to the applicable floating charge, for any debt owing to that grantee, determined as at the relevant date; and
- (f) sixth, the grantee of any fixed security over any part of the property that ranks prior to the applicable floating charge but below the floating charge referred to in paragraph (e) of subsection (2) of section 431 of the Companies Act, for any debt owing to that grantee, determined as at the relevant date.

(5) After the debt secured by the applicable floating charge has been satisfied in full, any further distribution of the proceeds of realisation of the property in receivership shall be made to the company or, if the company is in liquidation, to the liquidator.

Duty of
receiver in
relation to
money

387. The receiver shall keep money relating to the property in receivership separate from other money received in the course of the receivership but not relating to the property in receivership, and from any other money held by or under the control of the receiver.

Duty of
receiver in
relation to
accounting
records

388. (1) A receiver shall at all times keep accounting records that correctly record and explain, in relation to the period of the receivership, all receipts, payments and other transactions relating to the property in receivership.

(2) On an application to the court by an interested person, the court may order that the applicant may inspect the accounting records referred to in subsection (1) on such terms and conditions as may be necessary.

(3) The accounting records referred to in subsection (1) shall be retained by the receiver for at least five years after the receivership ends.

(4) A receiver who fails to comply with this section commits an offence.

CHAPTER 5

REMUNERATION OF RECEIVER

389. (1) Subject to paragraph (a) of subsection (1) of section 403, a receiver shall be entitled to receive remuneration on one or more bases and at one or more hourly and percentage rates and fixed levels –

Remuneration
of receiver

(a) as may be agreed by the grantee, where the receiver is appointed under an instrument under subsection (1) of section 372 or;

(b) as may be determined by the court, where the receiver is appointed by the court under subsection (1) of section 373.

(2) The receiver shall, in addition to remuneration, be entitled to retain the reasonable costs of storage of such records as are required under subsection (3) of section 388.

CHAPTER 6

REPORTING BY RECEIVER

390. (1) A receiver or a person who was a receiver at the end of the receivership, as the case may be, shall, within two months after the person's appointment as receiver, prepare a report on the state of affairs with respect to the property in receivership, including –

First report by
receiver

- (a) particulars of the property comprising the property in receivership;
- (b) particulars of the debts and other liabilities to be satisfied from the property in receivership;
- (c) the names and addresses of the creditors with an interest in the property in receivership;
- (d) particulars of any encumbrance over the property in receivership held by any creditor, including the date on which it was created;
- (e) particulars of any default by the grantor in making relevant information available; and
- (f) such other information as may be prescribed.

(2) The report referred to in subsection (1) shall also include details of –

- (a) the events leading up to the appointment of the receiver, so far as the person is aware of them;
- (b) property disposed of and any proposals for the disposal of property in receivership;
- (c) amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed;
- (d) amounts owing, as at the date of appointment, to creditors of the grantor having preferential claims; and
- (e) amounts likely to be available for payment to creditors other than those referred to in paragraph (c) and paragraph (d).

(3) A receiver may omit from a report required to be prepared under subsection (1) details of any proposals for disposal of property in receivership if the receiver considers that their inclusion would materially adversely affect the performance of the receiver's functions.

(4) Every person who fails to comply with this section commits an offence.

391. (1) A receiver or a person who was a receiver at the end of the receivership, as the case may be, shall, within twenty working days after –

Further reports
by receiver

(a) the end of each period of six months after the receiver was appointed; and

(b) the day on which the receivership ends,

prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership, including all amounts received and paid, during the period to which the report relates.

(2) The report referred to in subsection (1) shall include details of –

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

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

(c) amounts owing, as at the date of the report, to creditors of the grantor having preferential claims;

- (d) amounts likely to be available, as at the date of the report, for payment to creditors other than those referred to in paragraph (b) and paragraph (c); and
- (e) such other information as may be prescribed.

(3) A receiver may omit from a report required to be prepared under paragraph (a) of subsection (1) details of any proposals for disposal of property in receivership if the receiver considers that their inclusion would materially adversely affect the performance of the receiver's functions.

(4) Every person who fails to comply with this section commits an offence.

Extension
of time for
preparing
reports

392. (1) A period of time within which a person is required to prepare a report under section 390(1) or 391(1) may be extended, on the application of that person, by –

- (a) the court, where the person was appointed a receiver by the court under subsection (1) of section 373; or
- (b) the Registrar, where the person was appointed as a receiver under an instrument under subsection (1) of section 372.

Persons
entitled to
inspect and
receive reports

393. (1) Where a report has been prepared under section 390(1) or 391(1), the person who prepared it shall within five working days –

- (a) send it to the grantor;
- (b) cause it to be available for inspection by the grantor and the persons referred to in subsection (4); and
- (c) cause notice to be given to the grantor and the persons referred to in subsection (4) that a report has been prepared and that –

- (i) the report is available to be inspected; and
- (ii) copies of the report will be sent on request on payment of the reasonable costs of the making and sending of such copies.

(2) Where the person who prepared a report under subsection (1) of section 390 or subsection (1) of section 391 was appointed as a receiver by the court, the person shall file it with the registrar of the court.

(3) A person referred to in subsection (4) is entitled to inspect a report prepared under subsection (1) of section 390 or subsection (1) of section 391 during normal working hours at the office of the person who prepared it.

(4) Within ten working days after receiving a request for a copy of any report prepared under subsection (1) of section 390 or subsection (1) of section 391 from –

- (a) a director of the grantor;
- (b) a creditor of the grantor; or
- (c) any other person with an interest in the property in receivership,

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

(5) Within ten working days after preparing a report under subsection (1) of section 390 or subsection (1) of section 391, the person who prepared it shall send a copy to the Registrar and Authority.

(6) Every person who fails to comply with this section commits an offence.

Duty of
receiver to
report offence
committed

394. (1) Where a receiver believes or has reasonable grounds to believe, that the company or any involved party has committed an offence under –

- (a) this Act;
- (b) the Companies Act; or
- (c) the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021,

the receiver shall as soon as practicable report the matter to the Registrar and Authority.

(2) The Registrar and Authority shall refer a matter reported under subsection (1) to the appropriate law enforcement authority.

(3) In any case where a receiver makes a report on a matter under subsection (1) that is reported to a law enforcement authority under subsection (2), the receiver shall give to the authority such assistance as the authority may require by way of –

- (a) provision of information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(4) Nothing in this section shall –

- (a) impose any duty on a receiver to investigate whether any offence of a kind referred to in subsection (1) has been committed; or
- (b) affect or limit any duty imposed on a receiver under any other written law.

(5) A receiver who fails to comply with subsection (1) or subsection (3) commits an offence.

CHAPTER 7

LIABILITY OF RECEIVER

395. (1) A receiver is entitled to an indemnity out of the property in receivership, in respect of the receiver's liability under sections 396 and 397. Receiver's indemnity

(2) A receiver's indemnity under subsection (1) has the priority accorded to the costs, charges and expenses properly incurred by and the remuneration of the receiver under paragraph (b) of subsection (4) of section 385 or paragraph (b) of subsection (4) of section 386.

(3) Nothing in this section shall –

- (a) limit any other right of indemnity to which a receiver may be entitled;
- (b) limit the liability of a receiver on an agreement entered into without authority; or
- (c) confer on a receiver a right to an indemnity in respect of liability on an agreement entered into without authority.

396. (1) A receiver is not liable for payment in relation to a contract of employment entered into before the receiver's appointment, unless – Liability of receiver under pre-existing employment contracts

- (a) the receiver expressly adopts the contract in writing; or
- (b) subsection (3) applies.

(2) The adoption of a contract under paragraph (a) of subsection (1) may exclude or limit the liability of a receiver, other than a receiver appointed by the court under subsection (1) of section 373.

(3) A receiver is liable for payment in relation to a contract of employment entered into before the receiver's appointment, of –

- (a) wages or salary;
- (b) advance personal income tax;
- (c) provident fund dues;
- (d) statutory gratuities; and
- (e) employees trust fund dues

that accrue from the date of appointment of the receiver up to –

- (f) the earliest of –
 - (i) the date before the end of the receivership;
 - (ii) the date on which the receiver ceases to be a receiver; and
 - (iii) the date of termination of the contract,

if the receiver gives notice of termination of the contract, in accordance with the law applicable to termination of employment, within ten working days after the appointment; or

- (g) the earlier of –
 - (i) the end of the receivership; and
 - (ii) the date on which the receiver ceases to be a receiver,

if the receiver does not give notice of termination of the contract, in accordance with the law applicable to termination of employment, within ten working days after the appointment.

(4) The court may, on the application of the receiver, made before the end of the period of ten working days referred to in paragraphs (f) and (g) of subsection (3), extend that period on such terms and conditions as may be necessary.

397. (1) A receiver is liable on an agreement entered into by the receiver in the exercise and performance of any of the receiver's powers and functions.

Liability
of receiver
on other
agreements
and for rent

(2) Subsection (1) shall have effect, notwithstanding any agreement to the contrary, but without prejudice to the receiver's rights against the company or any other person.

(3) Subject to subsections (4) and (5), a receiver is liable for rent and any other payments becoming due under an agreement subsisting at the date of the receiver's appointment relating to the use, occupation or possession by the grantor of property in receivership.

(4) The liability of a receiver under subsection (3) is limited to that portion of the rent or other payments that is attributable to the period commencing ten working days after the appointment of the receiver, and ending on the earliest of –

- (a) the end of the receivership;
- (b) the day on which the receiver ceases to be a receiver; and
- (c) the day on which the grantor ceases to use, occupy or possess the property.

(5) On the application of the receiver, the court may –

- (a) limit the liability of the receiver to a greater extent than that specified in subsection (4); or
- (b) exempt the receiver from liability under subsection (3) altogether.

(6) Nothing in subsection (3) or subsection (4) shall –

- (a) be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (3); or
- (b) render a receiver liable in respect of the non-performance of any other obligation under such an agreement.

Relief from
liability in
the event of a
defect

398. (1) The court may relieve a person who has acted as a receiver from liability incurred in the course of the receivership, where the court is satisfied that –

- (a) the liability was incurred solely by reason of a defect in the instrument or the order of the court by or under which the receiver was appointed; and
- (b) the receiver acted honestly and reasonably and should in the circumstances be exempted from liability.

(2) In making any order under subsection (1) the court may, where necessary, impose any term or condition.

(3) A person in whose interests a receiver was appointed shall be liable, to the extent to which the receiver is relieved from liability under subsection (1), subject to such terms and conditions as the court may impose as may be necessary.

CHAPTER 8

VACANCY IN OFFICE AND END OF RECEIVERSHIP

Vacancy
in office of
receiver

399. (1) The office of receiver shall become vacant if the person holding that office –

- (a) resigns office under subsection (2);

- (b) dies;
- (c) is removed from office by the court;
- (d) has the person's registration as an Insolvency Practitioner been suspended or cancelled; or
- (e) sends a copy of a report, required to be prepared under paragraph (b) of subsection (1) of section 391 to the Registrar and Authority under section 393.

(2) A receiver appointed under an instrument under subsection (1) of section 372 may resign office, by giving five working days written notice of the receiver's intention to resign to the person by whom the receiver was appointed, in such manner as may be prescribed.

(3) A receiver appointed by the court under subsection (1) of section 373 shall not resign office except with the permission of the court.

(4) Where a vacancy occurs in the office of receiver, other than under paragraph (e) of subsection (1) –

- (a) written notice of the vacancy shall as soon as practicable shall be given to the Registrar and Authority by the person vacating office or, if that person is unable to act, by the person's legal representative; and
- (b) within twenty working days after the vacancy occurring, either –
 - (i) if the person vacating office was appointed under an instrument under subsection (1) of section 372, the appointer may appoint a replacement receiver under that subsection; or

- (ii) if the person vacating office was appointed by the court under subsection (1) of section 373, the applicant may apply to the court for the appointment of a replacement receiver under that subsection.

(5) The receivership shall end where a vacancy occurs in the office of receiver other than under paragraph (e) of subsection (1) and –

- (a) within twenty working days after the vacancy occurring, neither an appointment nor an application under paragraph (b) of subsection (4) has been made; or
- (b) an application has been made under subparagraph (ii) of paragraph (b) of subsection (4) and the application is refused.

(6) A person vacating the office of receiver other than under paragraph (e) of subsection (1) shall where practicable, provide such information and give such assistance to the person's successor as the successor may reasonably request.

(7) On the application of a person appointed to fill a vacancy in the office of receiver, the court may make any order that it considers necessary to facilitate the performance, exercise and discharge of the receiver's functions, powers and duties.

(8) Every person who fails to comply with either paragraph (a) of subsections (4) or (6) commits an offence under this subsection and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

(9) Every person who fails to comply with any court order made in terms of subsection (7) commits an offence under this subsection and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand rupees.

400. A receivership ends –

End of
receivership

- (a) when a receiver is satisfied that –
 - (i) the debt secured by the fixed security or floating charge by virtue of which the receiver was appointed has been satisfied in full; or
 - (ii) if earlier than expected –
 - (a) all of the property in respect of which the receiver was appointed has been realized, or so much as can in the receiver’s opinion be realised without needlessly protracting the receivership has been realised; and
 - (b) all of the proceeds of realisation have been distributed;
- (b) after notice is given to a receiver by an administrator or liquidator, requiring the receivership to end, under section 234 or 331; or
- (c) under subsection (5) of section 399.

401. (1) This section applies to a person who was a receiver at the end of a receivership.

Duty of
receiver to
notify end of
receivership

(2) Within two working days after the end of the receivership, the person shall –

- (a) give written notice of the end of the receivership to the company or, if the company is in liquidation, the liquidator;
- (b) where the person was appointed as a receiver by the court, file the notice with the registrar of the court; and

- (c) send a copy of the notice to the Registrar and Authority.

(3) Every person who fails to comply with this section commits an offence.

CHAPTER 9

POWERS OF THE COURT IN A RECEIVERSHIP

Application
for directions
by a receiver

402. (1) On the application of the receiver or the Authority, the court may –

- (a) give directions in relation to any matter arising in connection with the performance, exercise or discharge of any of the functions, powers and duties of the receiver;
- (b) revoke or vary any such directions.

(2) The powers conferred under subsection (1) –

- (a) are in addition to any other powers the court may exercise; and
- (b) may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

(3) It is a defence to a claim against a receiver, in relation to any act, omission or decision of the receiver, that the receiver acted so in compliance with a direction given under subsection (1).

Order
regarding
remuneration
or
appointment
of receiver

403. (1) On the application of a person referred to in subsection (2), the court may –

- (a) in respect of any period or activity for which the remuneration of a receiver has not been

determined under subsection (1) of section 389,
fix such remuneration at a level that is reasonable
in the circumstances;

- (b) declare whether or not a receiver was validly
appointed in respect of any property or whether
or not receiver has validly entered into the
possession or custody or assumed control of any
property.

(2) Any of the following persons may
make an application to the court under subsection (1) –

- (a) the receiver or a person to be appointed as
receiver;
- (b) a liquidator or provisional liquidator;
- (c) an administrator or deed administrator;
- (d) the grantor;
- (e) a creditor of the grantor;
- (f) any other person with an interest in the property
in receivership;
- (g) with respect to paragraph (b) of subsection (1),
the Registrar; or
- (h) the Authority.

(3) The powers conferred under subsection (1) may be
exercised whether or not the receiver has ceased to act as
receiver when the application is made.

404. (1) The court may, subject to subsection (2), on the
application of the grantor or a liquidator of the grantor –

Court may
restrict or limit
receivership

- (a) order that a receiver shall cease to act as from
a specified date and time, and prohibit the

appointment of any other receiver in respect of the property in receivership; or

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

(2) An order under subsection (1) may be made where the court is satisfied that –

- (a) the purpose of the receivership has been satisfied so far as possible; or
- (b) circumstances no longer justify its continuation.

(3) Unless the court orders otherwise, a copy of an application under this section shall be served on the receiver at least five working days before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) In making an order under subsection (1), the court may, as may be necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

(5) An order made under subsection (1) shall not affect an encumbrance over the property in receivership.

Order to
enforce
receiver's
duties

405. (1) In this section, “failure to comply”, with respect to a receiver, means a failure (by act or omission) by the receiver to comply with a duty arising –

- (a) under the instrument or the order of the court by or under which the receiver was appointed;
- (b) under this Act or any other written law; or

- (c) under any order or direction of the court, except an order to comply made under this section,

and “comply” shall have the corresponding meaning.

(2) On the application of a person referred to in subsection (3), and where the court is satisfied that there is or has been a failure to comply, the court may –

- (a) without prejudice to any other right or remedy that may be available in relation to a breach of duty, order the receiver to comply with the applicable duty so far as may be specified in the order; or
- (b) relieve the receiver of the duty to comply with the applicable duty, wholly or in part.

(3) Any of the following persons may make an application to the court under subsection (2) –

- (a) a receiver, in relation to a failure to comply by another receiver of property of the grantor;
- (b) the grantor;
- (c) a creditor of the grantor;
- (d) any other person with an interest in the property in receivership;
- (e) a liquidator or provisional liquidator of the grantor;
- (f) an administrator or deed administrator of the grantor;
- (g) the Registrar; or
- (h) the Authority.

(4) No application shall be made under subsection (2) unless notice of the failure to comply has been served on the receiver at least ten working days before the application and, as at the date of the application, there is a continuing failure to comply.

(5) A copy of every order made under paragraph (a) of subsection (2) shall, within five working days after the making of the order, be sent by the court to the Authority.

Removal of
receiver from
office by court

406. (1) On the application of a person referred to in subsection (3) of section 405 and where the court is satisfied that a receiver –

- (a) has failed to comply with an order made under paragraph (a) of subsection (2) of section 405; or
- (b) has ceased to be permitted under section 370 to be appointed or act as receiver,

the court may make an order removing the said receiver from office, and in making such an order, may, where necessary, make any other ancillary order.

(2) A copy of every order made under subsection (1) shall, within five working days after the making of the order, be sent by the court to the Registrar and Authority.

Orders
protecting
property in
receivership

407. (1) The court may, in making an order that removes or has the effect of removing a receiver from office, make such orders as may be necessary –

- (a) for preserving the property in receivership; and
- (b) for that purpose of paragraph (a), require the person removed from office –
 - (i) to deliver to such person as may be specified in the order any documents in the possession

or custody or under the control of the receiver
as may be specified in the order; and

- (ii) to take such other action as may be necessary.

PART XIV

Cross - Border Insolvency

408. (1) An application may be made to the court for the liquidation of an overseas company. Overseas
companies

(2) An application may be made under subsection (1) whether or not the overseas company –

- (a) is a registered overseas company;
- (b) has given notice under section 496 of the Companies Act that it has ceased to have a place of business in Sri Lanka; or
- (c) has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of any other jurisdiction.

(3) Part XII applies to the liquidation of an overseas company, except that –

- (a) references to a company shall be taken to include references to an overseas company; and
- (b) section 349 shall not apply.

PART XV

Insolvency

CHAPTER 1

INABILITY TO PAY DEBTS AND WRONGFUL TRADING

Inability to
pay debts

409. (1) An individual is insolvent where such individual is unable to pay such individual's debts as they become due.

(2) A company is insolvent where it is unable to pay its debts as they become due in the normal course of business.

(3) Insolvency within the meaning of subsection (1) or subsection (2) may be proved by any evidence.

(4) For the purposes of this Act, a company shall be presumed, unless the contrary is proved, to be insolvent within the meaning of subsection (2) where –

- (a) a creditor by assignment or otherwise, to whom the company is indebted in a sum than due or exceeding such amount as may be prescribed, has served on the company a statutory demand requiring the company to pay the sum so due or secure or compound for it, and the company has for twenty one days from the date of service failed without reasonable cause to comply with the demand by paying the sum or securing or compounding for it to the reasonable satisfaction of the creditor;
- (b) execution or other process levied 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.

410. (1) On the application of the company, on which a statutory demand has been served the court may set aside a statutory demand where it is satisfied that – Court may set aside demand

- (a) the sum is disputed on grounds that appear to be substantial;
- (b) the company appears to have a counterclaim, set-off or cross-demand, and the amount specified in the demand less the amount of that counterclaim, set-off or cross-demand appears not to exceed the prescribed amount; or
- (c) the demand should be set aside for some other reason.

(2) An application under subsection (1) shall be –

- (a) made within ten working days after service of the demand on the company; and
- (b) in such form as may be prescribed.

(3) An application under subsection (1) suspends the time for compliance with the demand.

(4) Where the court refuses an application under subsection (1), the time for compliance with the demand shall run again from the date of the refusal.

(5) In making an order under subsection (1), the court may, as may be necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

411. (1) A director of a company who believes that the company is unable to pay its debts as they become due Wrongful trading

in the normal course of business, or within a reasonable time thereafter, shall, where a meeting has not already been convened under this subsection, forthwith convene a meeting of the directors of the company to consider –

- (a) whether the company is unable to pay its debts as they become due in the normal course of business, or within a reasonable time thereafter; and
- (b) whether the Board of the company should –
 - (i) resolve that an administrator of the company be appointed under section 186;
 - (ii) make an application to the court under paragraph (b) of subsection (1) of section 190 for the appointment of an administrator of the company; or
 - (iii) make an application to the court under paragraph (c) of subsection (2) of section 298 for the appointment of a liquidator of the company.

(2) Where –

- (a) a director fails to comply with subsection (1);
- (b) at the time of that failure, the company was unable to pay its debts as they became due in the normal course of business, or within a reasonable time thereafter; and
- (c) a liquidation of the company commences within five years thereafter,

the court may, on the application of the liquidator or a creditor, order that the director shall be liable for the whole or part of any loss suffered by creditors as a result of the

company not being put into administration or liquidation at the time of the failure.

(3) Where –

(a) either –

(i) a meeting is convened under subsection (1) but the directors fail to hold it; or

(ii) at a meeting convened under subsection (1), the directors fail to take one of the steps set out in paragraph (b) of subsection (1);

(b) at the time of that failure, there were no reasonable grounds to believe that the company was able to pay its debts as they became due in the normal course of business, or within a reasonable time thereafter; and

(c) a liquidation of the company commences within five years thereafter,

the court may, on the application of the liquidator or a creditor, order that the directors of the company, other than those directors who attended the meeting and voted in favour of taking one of the steps set out in paragraph (b) of subsection (1), shall be liable for the whole or part of any loss suffered by creditors as a result of the company not being put into administration or liquidation at the time of the failure, as the court thinks fit.

(4) In making an order under this section, the court may, where necessary –

(a) impose any term or condition; and

(b) make any other ancillary order.

(5) Nothing in this section shall –

- (a) affect or limit the application of section 187 of the Companies Act; or
- (b) prevent the board of a company from convening a meeting of the shareholders to consider a resolution of the company for –
 - (i) the appointment of an administrator under section 185;
 - (ii) an application to the court under paragraph (b) of subsection (1) of section 190 for the appointment of an administrator; or
 - (iii) an application to the court under paragraph (c) of subsection (2) of section 298 for the appointment of a liquidator.

CHAPTER 2

VOIDABLE TRANSACTIONS

Voidable
preference

412. (1) A transaction by a debtor may be set aside by the court on the application of a relevant office holder where it –

- (a) is entered into at a time when the debtor is insolvent;
- (b) enables a person to receive more towards the satisfaction of a debt by the debtor than that person would receive, or would be likely to receive, in a bankruptcy or liquidation of the debtor; and

(c) either –

- (i) if entered into with a person other than a connected party of the debtor, was entered into within the standard review period; or
- (ii) if entered into with a connected party of the debtor, was entered into within the connected party review period.

(2) For the purposes of subsection (1), a transaction that is entered into within the standard review period is presumed, unless the contrary is proved, to be entered into at a time when the debtor is insolvent.

(3) Where –

- (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor, including a relationship to which other persons are parties; and
- (b) in the course of the relationship, the level of the debtor's net indebtedness to the creditor is increased and decreased from time to time as it constitutes a series of transactions forming part of the relationship;
- (c) considering paragraph (b), subsection (1) applies in relation to all of the transactions forming part of the relationship as if they together constituted a single transaction.

(4) The transaction referred to in paragraph (a) of subsection (3) may not be taken to be a voidable preference unless the effect of applying subsection (1) in accordance with paragraph (c) of subsection (3) is that the single transaction referred to in paragraph (c) of subsection (3) is taken to be a voidable preference.

(5) A voidable preference is a transaction that may be set aside under subsection (1).

Voidable
encumbrance

413. (1) Subject to subsections (3) and (5), an encumbrance, other than a lien, over any property or the undertaking of a debtor may be set aside by the court on the application of a relevant office holder where –

(a) immediately after the encumbrance was given, the debtor was insolvent; and

(b) either –

(i) if the encumbrance was given in favour of a person other than a connected party of the debtor, it was given within the standard review period; or

(ii) if the encumbrance was given in favour of a connected party of the debtor, it was given within the connected party review period.

(2) For the purposes of subsection (1), a debtor giving an encumbrance within the standard review period is presumed, unless the contrary is proved, to have been insolvent immediately after giving the encumbrance.

(3) Subject to subsection (4), an encumbrance may not be set aside under subsection (1) where –

(a) the encumbrance secures –

(i) money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the grantee of the encumbrance to the debtor at the time of, or at any time after, the giving of the encumbrance; and

- (ii) any interest payable on an amount referred to in subparagraph (i); or
 - (b) the encumbrance is in substitution for an encumbrance given by the debtor and either –
 - (i) if given in favour of a person other than a connected party of the debtor, was given before the standard review period; or
 - (ii) if given in favour of a connected party of the debtor, was given before the connected party review period.
- (4) Paragraph (b) of subsection (3) shall not apply to the extent that –
- (a) the amount secured by the substitute encumbrance exceeds the amount that was secured by the existing encumbrance; or
 - (b) the value of the property subject to the substitute encumbrance at the date of substitution exceeds the value of the property that was subject to the existing encumbrance at that date.
- (5) An encumbrance may not be set aside under subsection (1) where it secures the unpaid purchase price of property and any interest payable on that amount, whether or not the encumbrance is given over that property, if the instrument creating the encumbrance is executed –
- (a) within twenty working days after the sale of the property; or
 - (b) in the case of the sale of an estate or interest in immovable property, within twenty working days after the final settlement of the sale.

(6) For the purposes of paragraph (a) of subsection (3) and subsection (5), where a debtor has made a payment to a grantee of an encumbrance that meets the condition in paragraph (b) of subsection (1), the payment shall be deemed to have been appropriated to the extent necessary towards –

- (a) repayment of money actually advanced or paid by the grantee of the encumbrance to the debtor on or after the giving of the encumbrance;
- (b) payment of the actual price or value of property sold or supplied by the grantee of the encumbrance to the debtor on or after the giving of the encumbrance;
- (c) satisfaction of any other liability of the debtor to the grantee of the encumbrance in respect of any other valuable consideration given in good faith on or after the giving of the encumbrance,

including interest payable on any amount referred to in paragraphs (a), (b) and (c).

(7) A voidable encumbrance is an encumbrance that may be set aside under subsection (1).

Alienation
of property
with intent to
hinder, delay
or defeat a
creditor

414. (1) Subject to subsections (2) and (3), every conveyance or transfer of property by a debtor in the extended review period, with intent to hinder, delay or defeat a creditor in the exercise of any right of recourse of the creditor in respect of the property, may be set aside by the court on the application of a relevant office holder.

(2) A conveyance or transfer may not be set aside under subsection (1) where the property was conveyed or transferred to a person who acquired the property in good faith without knowledge of the intent referred to in subsection (1).

(3) Nothing in subsection (1) shall affect or limit any right of or remedy available to a secured creditor.

(4) An alienation with intent is a conveyance or transfer that may be set aside under subsection (1).

415. (1) An application to the court for the setting aside of a voidable transaction shall, in addition to complying with all other applicable requirements under this Act or regulations made thereunder and any other written law, specify –

Procedure for
setting aside
a voidable
preference,
voidable
encumbrance
or alienation
with intent

- (a) the date of the transaction that is subject to challenge;
- (b) the particulars of the transaction that is subject to challenge;
- (c) the manner in which each of the applicable conditions for the setting aside is said to be satisfied;
- (d) the order or orders that the relevant office holder seeks; and
- (e) the calculations of all amounts and values that are relied upon in seeking the order or orders referred to in paragraph (d).

(2) The relevant office holder shall, in such manner and within such period as may be prescribed, serve a copy of the application on –

- (a) the person other than the debtor that was a party to the transaction; and
- (b) any other person against whom the relevant office holder seeks the order or orders,

in each case, together with such other information as may be prescribed.

(3) Any person referred to in paragraph (a) and (b) of subsection (2) may object, in such manner and within such period as may be prescribed, to the setting aside as provided in subsection (1).

Court orders
on setting
aside a
voidable
preference,
voidable
encumbrance
or alienation
with intent

416. (1) On the setting aside of a voidable transaction, the court may make one or more of the following orders : –

(a) an order that a person transfers to –

(i) the relevant office holder; or

(ii) if the liquidation of the debtor has commenced after the application to court was made, the liquidator,

property or a property interest of the debtor that was transferred under the voidable transaction;

(b) an order that a person pays to –

(i) the relevant office holder; or

(ii) if the liquidation of the debtor has commenced after the application to court was made, the liquidator,

an amount equal to some or all of the money that was paid under the voidable transaction;

(c) an order that a person pays to –

(i) the relevant office holder; or

(ii) if the liquidation of the debtor has commenced after the application to court was made, the liquidator,

an amount that, in the court's opinion, fairly represents some or all of the benefits that the person received as a result of the voidable transaction;

- (d) an order that a person transfers property or a property interest that, in the court's opinion, fairly represents either or both of the following (but without double-counting) –
 - (i) some or all of the money that was paid under the voidable transaction; and
 - (ii) some or all of the proceeds of realisation of property or of a property interest of the debtor that was transferred under the voidable transaction;
- (e) an order releasing, in whole or in part, a debt that has been incurred or a guarantee or encumbrance that has been given;
- (f) an order requiring security to be given for the discharge of an order made under this subsection;
- (g) an order specifying the extent to which a person affected by the setting aside of a voidable transaction is entitled to be treated as a creditor in the bankruptcy, administration or liquidation; or
- (h) an order declaring an agreement that constitutes, forms part of or relates to the voidable transaction, or specified provisions of such an agreement, either –
 - (i) to be void as from the time at which the agreement was made or such later time as may be specified in the order; or
 - (ii) to be unenforceable.

(2) In making an order under subsection (1) the court may, as may be necessary, make any other ancillary order.

Restrictions on
setting aside
a voidable
preference,
voidable
encumbrance
or alienation
with intent

417. (1) Subject to subsections (2), (3) and (4), the court may make an order under section 416 whether that order affects property of, or imposes an obligation upon any person, whether or not the person is a party to the voidable transaction or a beneficiary under the voidable transaction.

(2) Where a person is a party to a voidable transaction or a beneficiary under the voidable transaction, the court shall not make an order under section 416 against the person where the person proves that –

- (a) the person acted in good faith;
- (b) at the time of the voidable transaction, a reasonable person in the person's position would not have believed that the debtor was, or immediately after the voidable transaction would be, insolvent; and
- (c) either –
 - (i) the person gave substantial value under the voidable transaction; or
 - (ii) the person did not believe that the conditions for setting aside the voidable transaction (other than the condition in this paragraph) would be met, and it was reasonable for the person not to have such a belief.

(3) Where a person is neither a party to a voidable transaction nor a beneficiary under the voidable transaction, the court shall not make an order that affects an interest of the person in property that the person has acquired –

- (a) in good faith; and
- (b) for valuable consideration.

(4) Where a person referred to in subsection (3) is a connected party of the debtor, it shall be presumed, unless the contrary is proved, that the person acquired the property otherwise than in good faith.

418. (1) In this section –

Transaction at
an undervalue

- (a) “applicable transaction” means a transaction, with a recipient, to which the debtor was or is a party;
- (b) “excess” means the amount (if any) which a recipient received from the debtor under a transaction and such transaction exceeds the value that the debtor received from the recipient for the applicable transaction; and
- (c) “recipient” means a person who received value from the debtor.

(2) A relevant office holder may, following such procedure as may be prescribed, recover an excess from a recipient where –

- (a) the debtor entered into the applicable transaction within the period of two years immediately preceding the date of commencement of the debtor’s bankruptcy, administration or liquidation;
- (b) either –
 - (i) the debtor was insolvent when such debtor entered into the applicable transaction; or
 - (ii) the debtor became insolvent because it entered into the applicable transaction;

- (c) considering the value of the debtor's property, the excess is a significant amount; and
- (d) either or both of the conditions in subsection (3) is not met.

(3) The conditions referred to in paragraph (d) of subsection (2) are that –

- (a) the applicable transaction was to be at arm's length; and
- (b) the debtor entered into the applicable transaction in good faith.

(4) A transaction at an undervalue is a transaction under which an excess is liable to be recovered under this section.

Misfeasance

419. (1) Where, in the course of the administration, deed administration or liquidation of a company, the Authority or the court considers that an involved party has misapplied or retained or become liable or accountable for money or other property of the company, or has been guilty of negligence, default or breach of duty or trust in relation to the company, the court may on the application of a relevant office holder, a creditor, a contributory, the Official Receiver, the Authority, or another interested person –

- (a) inquire into the conduct of the involved party; and
- (b) either –
 - (i) order that person to repay or restore the money or other property or any part of it with interest at a rate the court thinks just;
 - (ii) order that person to contribute such sum as the court thinks just to the property of the company by way of compensation;

- (iii) where the application is made by a creditor, order that person to pay or transfer the money or other property or any part of it with interest at a rate the court thinks is just to the creditor or creditors; or
- (iv) make such other order as necessary.

(2) An order for payment of money under subsection (1) shall be deemed to be a final judgment for the purposes of section 89.

(3) An application under subsection (1) in relation to a person who has acted as administrator, deed administrator, liquidator or provisional liquidator of the company may not be made, except with the permission of the court, after that person has been released under section 258 or section 357.

420. (1) For the purposes of sections 412, 413, 414, 415, 416, 417, 418 and 419 – Definitions

- (a) “connected party review period” means the period of two years immediately preceding the date of commencement of the debtor’s bankruptcy, administration or liquidation;
- (b) “extended review period” means the period of five years immediately preceding the date of commencement of the debtor’s bankruptcy, administration or liquidation;
- (c) “relevant office holder” means –
 - (i) in a bankruptcy, the Bankruptcy Trustee;
 - (ii) in an administration, the administrator;
 - (iii) in a liquidation, the liquidator; and

(iv) where a deed of company arrangement is in force, and if an Insolvency Practitioner, the deed administrator; and

(d) “standard review period” means the period of six months immediately preceding the date of commencement of the debtor’s bankruptcy, administration or liquidation.

(2) For the purposes of sections 412 and 418, a “transaction” means any of the following steps by the debtor: –

- (a) conveying or transferring property of the debtor;
- (b) giving an encumbrance over property of the debtor;
- (c) incurring an obligation;
- (d) undergoing an execution or other legal process or the levying of distress;
- (e) paying money; and
- (f) anything done or omitted to be done for the purpose of one or more of paragraphs (a), (b), (c), (d) and (e).

CHAPTER 3

PHOENIX COMPANIES

Phoenix
company

421. (1) In this Chapter –

“director of a failed company” means a person who was a director of a failed company at any time within the period of twelve months immediately preceding the date of commencement of its liquidation;

“failed company” means, a company that was put into liquidation where, section 302 either did not apply or ceased to apply to the company;

“phoenix company”, with respect to a failed company, means a company that, at any time before or within five years after commencement of the liquidation of the failed company or within such other period as may be prescribed, is incorporated with or changes its name to a pre-liquidation name of the failed company or a similar name;

“pre-liquidation name” means, any name (including any trading name) of a failed company in the period of twelve months immediately preceding the date of commencement of that company’s liquidation; and

“similar name” means, a name that is so similar to a pre-liquidation name of a failed company as to reasonably suggest an association with that company.

(2) Except with the permission of the court, or unless one of the exceptions in section 423, 424 or 425 applies, a director of a failed company shall not, for a period of five years after commencement of the liquidation of the failed company –

- (a) be a director of a phoenix company;
- (b) take part or be concerned in the formation, promotion or management of a phoenix company;
or
- (c) take part or be concerned in the carrying on of a business that has a pre-liquidation name of the failed company or a similar name.

(3) A person who fails to comply with subsection (2) commits an offence.

Personal
liability

422. (1) A person who fails to comply with paragraph (a) or paragraph (b) of subsection (2) of section 421 is personally liable for all of the relevant debts of the phoenix company.

(2) A person, (in this section referred to as “A”) who is involved in the management of a phoenix company shall be personally liable for all of the relevant debts of the company –

- (a) where in the management of the company, A acts or is willing to act on instructions given by another person (in this section referred to as “B”); and
- (b) if, at that time, A knows that B is contravening paragraph (a) or paragraph (b) of subsection (2) of section 421 in relation to the company.

(3) In this section, “relevant debt” –

- (a) in subsection (1) means the debts and other liabilities incurred by the phoenix company while the person liable was involved in the management of the company and the phoenix company was known by a pre-liquidation name of the failed company or a similar name; and
- (b) in subsection (2) means the debts and other liabilities incurred by the phoenix company while A was acting or was willing to act on the instructions of B and the phoenix company was known by a pre-liquidation name of the failed company or a similar name.

(4) Any liability under subsection (1) or subsection (2) is joint and several.

(5) For the purposes of this section, a person (in this section referred to as “C”) who is involved in the management of a company has at any time acted on instructions given by a person (in this section referred to as “D”) whom C knew at the time to be contravening subsection (2) is presumed, unless the contrary is proved, to have been willing at any later time to act on any instructions given by D.

423. (1) Section 421 shall not apply to a person named in a successor company notice.

Exception for
person named
in a successor
company
notice

(2) A successor company is a company that acquires the whole, or substantially the whole, of the business of a failed company under arrangements made by an administrator, liquidator or receiver or made under a deed of company arrangement.

(3) A successor notice is a written notice by a successor company that –

- (a) is given by the successor company to each known creditor of the failed company;
- (b) is given to those creditors within one month after the arrangements for the acquisition of the business referred to in subsection (2) are made;
- (c) specifies –
 - (i) the name and registered number of the failed company;
 - (ii) the circumstances in which the business has been acquired by the successor business;

- (iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on that business;
 - (iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on that business; and
- (d) states, in respect of a person named in the notice –
- (i) the person’s full name;
 - (ii) the duration of the person’s directorship of the failed company;
 - (iii) the extent of the person’s involvement in the management of the failed company.

Exception for
temporary
period

424. (1) A person shall not contravene a prohibition in subsection (2) of section 421 for the temporary period referred to in subsection (2) if that person applies to the court within five working days after commencement of the liquidation of the failed company for an order exempting that person from such prohibition.

(2) The temporary period referred to in subsection (1) is the period beginning on the date of the commencement of the liquidation of the failed company and ending on –

- (a) the day on which the court makes an order of exemption; or
- (b) if earlier, at the close of thirty working days after commencement of the liquidation.

Exception
regarding
non-dormant
company

425. (1) The prohibitions in paragraphs (a) and (b) of subsection (2) of section 421 shall not apply in respect of a phoenix company that has been known by a name or names

that are the same as the failed company's pre-liquidation name or are similar name where –

- (a) it has been known by that name or those names for at least the period of twelve months immediately preceding the date of commencement of the liquidation; and
- (b) it has not been dormant at any time during those twelve months.

(2) For the purposes of subsection (1), a company shall be deemed not to have been dormant at any time during the said twelve months, if transactions that are required by subsection (1) of section 148 of the Companies Act to be record, in its accounting records have occurred throughout that period.

CHAPTER 4

PROOFS OF DEBT, SET-Off, DISTRIBUTIONS, AND SENDING OF DOCUMENTS

A – PROOFS OF DEBT AND PROVING DEBTS

426. (1) In this section, “debt” means –

Proofs of debt
and proving
debts

- (a) any debt to which the debtor is subject at the relevant date;
- (b) any debt to which the debtor may become subject after the relevant date by reason of an obligation incurred before that date; and
- (c) any interest provable in accordance with subsection (8).

(2) A creditor wishing to vote or claim a distribution in respect of a debt, or for such other purposes as may be prescribed, shall submit a proof of debt unless –

- (a) this Act or any regulation made thereunder provides otherwise, or a court orders otherwise; or
- (b) section 302 applies to the company, in which case the creditor is not required to submit a proof unless the liquidator requires one to be submitted.

(3) A proof of debt –

- (a) is to be invited in such manner and at such times or on such occasions;
- (b) is, in such circumstances to be deemed to have been submitted;
- (c) is to be submitted in such manner and within such period; and
- (d) shall comply with such other requirements, including as to its content,

as may be prescribed by rules.

(4) Proofs of debt may be admitted or rejected, in whole or in part, in such manner, within such period and with such requirements for notice of admission or rejection as may be prescribed.

(5) A debt is proved when a decision is made to admit a proof of debt under subsection (4) with respect to it.

(6) Where –

- (a) a proof of debt relates to debt –
 - (i) that bears interest;
 - (ii) to which a trade discount or other discount relates;
 - (iii) that is incurred or payable in a foreign currency;
 - (iv) that is payable at a future time;
 - (v) that relates to rent or other payments of a periodical nature;
- (b) a proof of debt relates to the debtor's liability to calls as a contributory of a company;
- (c) a proof of debt is deemed under paragraph (b) of subsection (3) to have been submitted;
- (d) a proof of debt is subject to a contingency, or is for damages; or
- (e) for some other reason the amount of a proof of debt is uncertain,

the amount of the proof of debt that may be admitted shall be determined in such manner as may be prescribed by rules.

(7) In a liquidation –

- (a) the grantee of a fixed security shall have the options referred to in paragraph 1 of the Eighth Schedule with respect to that security; and
- (b) the exercise of those options shall be governed by the provisions of that Schedule.

(8) Interest up to but excluding the relevant date on debts referred to in paragraphs (a) and (b) of subsection (1) shall be provable, and shall be calculated in such manner as may be prescribed.

(9) Where an interested person is dissatisfied with a decision to admit or reject a proof of debt, in whole or in part, that person may appeal against the decision in such manner, within such period and with such requirements for notice of intention to appeal as may be prescribed.

(10) A proof of debt may be withdrawn or varied, subject to such conditions and in such manner as may be prescribed.

(11) A creditor shall be required to produce documents supporting a proof of debt, subject to such conditions and in such manner as may be prescribed.

(12) Inspection of proofs of debt shall be allowed, by such persons, in such manner and at such times and places as may be prescribed.

(13) Unless the court orders otherwise, a creditor shall bear the costs of proving its debt.

(14) Any person who –

(a) makes, or authorises the making of, a proof of debt that is false or misleading in a material particular, knowing it to be false or misleading;
or

(b) omits, or authorises an omission from, a proof of debt any fact or matter, knowing that the omission makes the proof of debt false or misleading in a material particular,

commits an offence.

B - SET-OFF

427. (1) Subject to subsections (3), (4) and (5), where there have been mutual credits, mutual debts or other mutual dealings between a bankrupt debtor and a person who seeks or, but for the operation of this section, would seek to have a claim admitted in a Bankruptcy, by way of proof of debt –

Set-off
between
a bankrupt
debtor and
another party

- (a) an account shall be taken of what is due from one party to the other in respect of those credits, debts or dealings;
- (b) an amount due from one party shall be set off against an amount due from the other party; and
- (c) only the balance of the account shall be admitted as a provable debt or be payable to the Bankruptcy Trustee as part of the Bankruptcy Estate.

(2) For the purposes of subsection (1), mutual credits, mutual debts and other mutual dealings do not include –

- (a) any debt arising out of an obligation incurred at any time after the commencement of the Bankruptcy or after which the person had notice of –
 - (i) ongoing proceedings on a Bankruptcy application relating to the bankrupt debtor under section 81; or
 - (ii) a pending Bankruptcy petition relating to the bankrupt debtor under section 85;
- (b) any debt acquired by the person, by assignment or otherwise, under an agreement entered into at any time after the commencement of the Bankruptcy or after which the person had notice of –

- (i) ongoing proceedings on a Bankruptcy application relating to the bankrupt debtor under section 81; or
- (ii) a pending Bankruptcy petition relating to the bankrupt debtor under section 85.

(3) For the purposes of this section, rules may be prescribed on determining the said amounts under section 426.

(4) Where an amount due from the bankrupt debtor to the person referred to in subsection (1) includes both preferential claims and claims that are not preferential claims, the amount due from the person to the bankrupt debtor shall under paragraph (b) of subsection (1) be set off rateably against such claims.

Set-off
between a
company and
another party

428. (1) Subject to subsections (3), (4) and (5), where there have been mutual credits, mutual debts or other mutual dealings between a company and a person who seeks or, but for the operation of this section, would seek to have a claim admitted in a liquidation, by way of proof of debt –

- (a) an account shall be taken of what is due from one party to the other in respect of those credits, debts or dealings;
- (b) an amount due from one party shall be set off against an amount due from the other party; and
- (c) only the balance of the account shall be admitted as a provable debt or be payable to the company.

(2) For the purposes of subsection (1), mutual credits, mutual debts and other mutual dealings do not include –

- (a) any debt arising out of an obligation incurred at any time after commencement of the liquidation or after which the person had notice of –

- (i) the convening of a meeting of the company to consider a resolution for the appointment of a liquidator under paragraph (a) of subsection (2) of section 298;
 - (ii) the convening of a meeting of the board of the company to consider a resolution for the appointment of a liquidator under paragraph (b) of subsection (2) of section 298;
 - (iii) the making of an application under paragraph (c) of subsection (2) of section 298;
 - (iv) a resolution of creditors for the appointment of a liquidator under paragraph (b) of subsection (2) of section 214;
- (b) any debt acquired by the person, by assignment or otherwise, under an agreement entered into at any time after commencement of the liquidation or after which the person had notice of –
 - (i) the convening of a meeting of the company to consider a resolution for the appointment of a liquidator under paragraph (a) of subsection (2) of section 298;
 - (ii) the convening of a meeting of the board of the company to consider a resolution for the appointment of a liquidator under paragraph (b) of subsection (2) of section 298;
 - (iii) the making of an application under paragraph (c) of subsection (2) of section 298; or
 - (iv) a resolution of creditors for the appointment of a liquidator under paragraph (b) of subsection (2) of section 214.

(3) Subsection (1) shall not apply to an amount paid or payable by a contributory –

- (a) as the consideration or part of the consideration for the issue of a share; or
- (b) in satisfaction of a call in respect of a liability of the contributory made by the board of the company or by the liquidator.

(4) For the purposes of this section, rules may be prescribed under subsection (6) of section 426 on determining the said amounts.

(5) Where an amount due from the company to the person referred to in subsection (1) includes both preferential claims and claims that are not preferential claims, the amount due from the person to the company shall under paragraph (b) of subsection (1) be set off rateably against such claims.

C – DISTRIBUTIONS

Distributions

429. (1) In this section, “distributing office holder” means –

- (a) in a bankruptcy, the Bankruptcy Trustee;
- (b) in a liquidation, the liquidator; and
- (c) in a receivership, the receiver.

(2) Where a distributing office holder proposes to make a distribution, the distributing office holder –

- (a) shall give –
 - (i) public notice; and
 - (ii) notice to individual creditors,

of the proposed distribution in compliance with such requirements as may be prescribed;

- (b) may, in such circumstances as may be prescribed, postpone or cancel a proposed distribution of which notice has been given;
- (c) may make such provision as the distributing office holder sees fit for –
 - (i) proofs of debt that have not been submitted or whose amounts have not been determined; and
 - (ii) expenses likely to be associated with the admission, or determination of the amounts of, such proofs of debt.

(3) Where a creditor's proof of debt is submitted or increased after the making of a distribution –

- (a) any distribution that has already been made shall not be disturbed on that ground;
- (b) if and to the extent that the proceeds of realisation of property are sufficient, any further distributions shall be made such that the proportion of the creditor's debt satisfied in those distributions is equal to the proportion previously satisfied of the debts of all other creditors with equally ranked claims.

(4) A distributing office holder shall not be liable in damages for failing to make a distribution, but where a distributing office holder refuses to make a distribution and on an application to the court by an interested person, the court may order that the distributing office holder shall –

- (a) make the distribution; and

- (b) pay out of the distributing office holder's own money –
 - (i) interest on the amount or value of the distribution at such rate as may be prescribed; and
 - (ii) the reasonable costs of the applicant incurred in making the application.

D - SENDING OF DOCUMENTS TO CREDITORS AND
OPTING OUT

Sending of
documents
to creditors
and opted-out
creditors

430. (1) Where this Act or a regulation made thereunder requires an office holder to send a document to creditors, including creditors of a particular class, the requirement is complied with by the sending of the document to all such creditors of whose address the office holder is aware other than opted-out creditors, except where –

- (a) the Act or the regulation provides otherwise;
or
- (b) a court orders otherwise.

(2) A creditor may at any time, and for any reason, elect to be an opted-out creditor by giving written notice, in such form as may be prescribed, to an office holder.

(3) An opted-out creditor may at any time, and for any reason, elect to cease to be an opted-out creditor by giving written notice, in such form as may be prescribed, to an office holder.

(4) An office holder shall, in the first written communication with a creditor, give notice, in such form as may be prescribed, that the creditor –

- (a) may elect to be an opted-out creditor; and
- (b) may subsequently elect to cease to be an opted-out creditor.

(5) An office holder shall treat a creditor as an opted-out creditor from the opt-out time to the earlier of –

- (a) the time at which the office holder ceases to hold office; and
- (b) the opt-out withdrawal time.

(6) In this section –

- (a) “opt-out time” is the earliest time, after the giving of notice by a creditor under subsection (2), at which it is reasonably practicable for the office holder to treat the creditor as an opted-out creditor;
- (b) “opt-out withdrawal time” is the earliest time, after the giving of notice by a creditor under subsection (3), at which it is reasonably practicable for the office holder to cease to treat the creditor as an opted-out creditor; and
- (c) “opted-out creditor”, with respect to an office holder, means a person who –
 - (i) is a creditor of the company;
 - (ii) has given a notice to the office holder under subsection (2); and
 - (iii) has not given a notice to the office holder under subsection (3).

PART XVI

General and Miscellaneous Provisions

CHAPTER 1

GENERAL

Insolvency
holding
account and
insolvency
surplus
account

431. (1) An account called the Insolvency Holding Account shall be kept by the Official Receiver with such bank as may from time to time be approved by the Minister.

(2) An Account called the Insolvency Surplus Account shall be kept by the Official Receiver with such bank as may from time to time be approved by the Minister.

Application
of unclaimed
and surplus
proceeds

432. (1) In this section –

“entitled person”, with respect to a distribution of proceeds of realisation of property, means a person entitled to those proceeds; and

“established claim” means a claim established to the reasonable satisfaction of the Official Receiver.

(2) Where a distribution of proceeds of realisation of property is made in a bankruptcy, liquidation or receivership and any such proceeds remain unclaimed –

- (a) for more than twelve months from the date on which the distribution is made; or
- (b) if earlier, at the time at which an order of discharge is made under section 138 in respect of the bankruptcy, or the liquidation or receivership ends,

the Bankruptcy Trustee, liquidator or receiver, as the case may be, shall surrender those proceeds to the Official Receiver.

(3) A Bankruptcy Trustee, liquidator or receiver shall be entitled to a certificate issued by the Official Receiver in respect of a surrender under subsection (2), which shall be an effectual discharge to the Bankruptcy Trustee, liquidator or receiver.

(4) The Official Receiver shall place all proceeds received under subsection (2) into the account of the Official Receiver called the “Insolvency Holding Account”, to be applied as soon as practicable in or towards the satisfaction of any established claim of an entitled person.

(5) At the expiry of twelve months from the date on which proceeds are received by the Official Receiver under subsection (2), the Official Receiver shall transfer the balance (after any application under subsection (4)) of such proceeds into the account of the Official Receiver called the “Insolvency Surplus Account”.

(6) If and to the extent that any amount is lying to the credit of the Insolvency Surplus Account, such amount shall –

- (a) where proceeds of realisation were transferred under subsection (5), be applied as soon as practicable in or towards satisfaction of any established claim of any entitled person;
- (b) be available to meet the costs of administration of personal insolvency proceedings in which the debtor’s estate is insufficient to cover such costs.

(7) Any amount lying to the credit of the Insolvency Surplus Account may, if prescribed, be invested in

compliance with such requirements as may be prescribed, and the income received on any such investments shall be paid promptly into the Insolvency Surplus Account.

(8) Where any sum is paid from the Insolvency Holding Account or Insolvency Surplus Account to an entitled person under subsection (4) or paragraph (a) of subsection (6), any other person who subsequently claims that sum shall not have any right of recourse to the Insolvency Holding Account or Insolvency Surplus Account in respect of that sum.

(9) The Official Receiver shall send reports on the Insolvency Holding Account and Insolvency Surplus Account to such persons, with such information, in such manner, and at such times or on such occasions as may be prescribed.

Creditor
resolutions

433. Where this Act refers to a resolution of creditors, the requirements for such a resolution shall be those in item 7 set out in the Fifth Schedule.

Contributory
resolutions

434. Where this Act refers to a resolution of contributories, the requirements for such a resolution shall be those in paragraph 7 of the Fifth Schedule .

Protection
in respect of
seizure or
disposal of
property

435. (1) Where a person referred to in subsection (2) seizes or disposes of any property that is not property of the company, the person shall not be liable in respect of any loss or harm resulting from the seizure or disposal unless caused by bad faith or negligence.

(2) Subsection (1) applies to an administrator, deed administrator, liquidator, provisional liquidator or special manager of a company.

(3) Nothing in subsection (1) shall affect or limit any right or remedy of any person to recover some or all of –

- (a) the property; or
- (b) any proceeds of realisation of the property.

436. If there has been a genuine attempt to appoint a person as administrator, deed administrator, liquidator, provisional liquidator, special manager or receiver under a power that has become exercisable, the acts of that person as an administrator, deed administrator, liquidator, provisional liquidator, special manager or receiver, as the case may be, are valid notwithstanding any defect in the person’s appointment or qualifications that is subsequently discovered.

Validity
of acts

437. (1) Where the exercise of a right is subject to a stay (however described) under this Act, any time period for the exercise of that right shall be extended by the duration of the stay.

Extension of
time period

(2) Nothing in subsection (1) shall affect any restriction or limitation on the exercise of a right, or the termination of a right, under this Act.

438. (1) In this section –

Documents
required by
a specified
office holder

(a) “requesting party” means –

- (i) the Authority;
- (ii) an administrator;
- (iii) a liquidator; or
- (iv) a provisional liquidator; and

(b) “specified office holder” means –

- (i) a Bankruptcy Trustee;
- (ii) a personal insolvency proposer;

- (iii) a personal insolvency administrator;
- (iv) an administrator;
- (v) a deed administrator;
- (vi) a liquidator;
- (vii) a provisional liquidator; or
- (viii) a receiver.

(2) A specified office holder shall have the right not to deliver to a requesting party any book, record or document that is otherwise to be delivered to the requesting party under this Act, where the specified office holder requires that book, record or document for the purpose of performing, exercising or discharging any of its powers, functions and duties.

(3) Where a specified office holder exercises the right under subsection (2), the requesting party may require the specified office holder to –

- (a) make the book, record or document, as the case may be, available for inspection by the requesting party at any reasonable time; and
- (b) provide the requesting party with a copy of the book, record or document, as the case may be, or the relevant part or parts of it.

(4) The requesting party shall pay the reasonable expenses of a specified office holder in complying with a requirement under subsection (3).

Requests and
notices

439. (1) Where this Act provides for the making of a request, but neither this Act nor any regulation made thereunder specifies the method by which the request is to be made, such request shall be made in writing.

(2) Where this Act provides for the giving of notice or written notice, but neither this Act nor any regulation made thereunder specifies the method by which the notice is to be given, such notice shall be given in writing.

(3) Where a provision of this Act requires public notice to be given, such notice shall be published -

- (a) in the *Gazette*;
- (b) in newspapers in general circulation, each to be in Sinhala, Tamil and English languages; and
- (c) on a website in compliance with such requirements as may be prescribed.

CHAPTER 2

OFFENCES

440. (1) When the administration or liquidation of a company commences, a person who is a past or present director or other officer of the company commits an offence where, within the period of two years immediately preceding the date of commencement of the administration or liquidation or at any time thereafter, the person has -

Misfeasance
of a director
or other
officer before
administration
or liquidation

- (a) concealed any part of the company's property to the value of ten thousand rupees or more, or concealed any debt owing to or from the company;
- (b) fraudulently removed any part of the company's property to the value of ten thousand rupees or more;

- (c) fraudulently parted with, altered or made any omission in, or been concerned in or abetted the fraudulent parting with, destroying, altering or making any omission in, any book, record or document relating to the affairs, business, property or financial circumstances of the company;
- (d) by any fraudulent representation or other fraud, obtained any property for or on behalf of the company on credit that the company has not subsequently paid for;
- (e) been concerned in or abetted the pawning, pledging or disposal of any property of the company that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposal was in the normal course of the company's business;
- (f) made or given or caused to be made or given any gift or transfer of or encumbrance over any property of the company or has caused or connived at the commencement or continuation of any execution or other legal process or the levying of distress against the company or any of its property, with the intent of defrauding creditors;
- (g) concealed or removed any part of the company's property after, or less than two months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company, with the intent of defrauding creditors; or
- (h) attempted to account for any part of the company's property by fictitious losses or expenses.

(2) It is a good defence to a charge under paragraph (a) or (e) of subsection (1) to prove that the person had no intent to defraud.

(3) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding three million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) Where a person is concerned in or abets the pawning, pledging or disposal of any property in circumstances that amount to an offence under paragraph (e) of subsection (1), any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence and shall be liable on conviction to a fine not exceeding three million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

441. (1) Where any business of a company that has been put into liquidation or administration has been carried on with intent to defraud a creditor or another person or for any fraudulent purpose, every person who was concerned in or abetted the carrying on of the business in that manner commits an offence and shall be liable on conviction to a fine not exceeding three million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

Fraudulent
trading

(2) Where any business of a company that has been put into liquidation or administration has been carried on with intent to defraud a creditor or another person or for any fraudulent purpose, the court may, on the application of the liquidator or administrator, as the case may be, order that every person who abetted or was concerned in the carrying on of the business in that manner –

- (a) make such contribution to the property of the company; or

- (b) be personally responsible for such debts and other liabilities of the company,

as the court thinks fit.

(3) In making an order under this section, the court may, as may be necessary –

- (a) impose any term or condition; and
- (b) make any other ancillary order.

Offence
relating to
administration
or liquidation

442. (1) Where a company is in administration or liquidation or of which the administration or liquidation subsequently commences, and a past or present director or other officer, or a contributory, of such company–

- (a) in response to a request by the administrator, liquidator or provisional liquidator, does not to the best of the person's knowledge and belief, fully and truly make known to the administrator, liquidator or provisional liquidator, as the case may be, all of the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the normal course of the company's business;
- (b) does not deliver to the administrator, liquidator or provisional liquidator all such part of the movable and immovable property of the company as is in the person's possession or custody or under the person's control, and which the administrator, liquidator or provisional liquidator, as the case may be, may reasonably request the person to deliver;

- (c) does not deliver to the administrator, liquidator or provisional liquidator all books, records and documents of the company in the person's possession or custody or under the person's control and which the administrator, liquidator or provisional liquidator, as the case may be, may reasonably request the person to deliver;
- (d) prevents the production of any book, record or document to the administrator, liquidator or provisional liquidator relating to the company's affairs, business, property or financial circumstances;
- (e) makes, abets or is concerned in the making of, any statement relating to the affairs, business, property or financial circumstances of the company that –
 - (i) is false or misleading in a material particular; or
 - (ii) omits to disclose any fact or matter, where such omission makes the statement false or misleading in a material particular;
- (f) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the administrator, liquidator or provisional liquidator thereof; or
- (g) makes any fraudulent representation or does any other fraud for the purpose of obtaining the consent of any creditor to an agreement with respect to the company or to the administration or liquidation,

such director or other officer, or a contributory commits an offence and shall on conviction, be liable to a fine not exceeding three million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(2) It is a good defence to a charge under paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.

Conduct
prohibited

443. (1) If a company is in liquidation or administration, or an application has been made under paragraph (c) of subsection (2) of section 298 or under subsection (1) of section 190 no person shall leave Sri Lanka if such leaving would amount to –

- (a) avoiding payment of money owing to the company;
- (b) avoiding examination in relation to the affairs of the company; or
- (c) avoiding compliance with an order of the court or another requirement under this Act or any regulation made thereunder, in relation to the affairs of the company.

(2) A person who fails to comply with subsection (1) commits an offence.

Liability
where proper
accounts
not kept

444. (1) Where in the course of the administration or liquidation of a company it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the date of commencement of the administration or liquidation, or the period between the incorporation of the company and the date of commencement of the administration or liquidation, whichever is the shorter, every director and other officer of

the company who is in default shall, unless the director or other officer shows that –

- (a) the director or other officer acted honestly and reasonably; and
- (b) in the circumstances in which the business of the company was carried on the default was inevitable,

commits an offence.

(2) For the purposes of this section, proper books of accounts shall be deemed not to have been kept in the case of any company if there have not been kept such books of accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business involves dealing in goods, statements of annual stock-takings (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

445. Any person who supplies any information, required by or for the purposes of this Act, where –

False or
misleading
statement

- (a) the information is false or misleading in a material particular; and
- (b) the person either –
 - (i) knows that the information is false or misleading in a material particular and discloses the same; or
 - (ii) omits to disclose any fact or matter, knowing that the omission makes the information false or misleading in a material particular,

commits an offence and shall be liable on conviction to a fine not exceeding three million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

Applicability
of the
Employees
Provident
Fund Act, the
Employees
Trust Fund
Act and the
Payment of
Gratuity Act to
administrators
and liquidators

446. Notwithstanding the provisions of any other written law, including the Employees Provident Fund Act, No. 15 of 1958, the Employees Trust Fund Act, No. 46 of 1980 and the Payment of Gratuity Act, No. 12 of 1983, an administrator or liquidator shall not be held criminally liable for matters pertaining to the non-payment of employee provident fund dues, employee trust fund dues and statutory gratuity payments.

CHAPTER 3

JURISDICTION AND PROCEDURE

Jurisdiction

447. (1) In this Act, unless the context otherwise requires, “court” means –

- (a) in relation to a personal insolvency procedure, the District Court of the district in which the debtor resides;
- (b) in a matter relating to a company, the District Court of the district in which the registered office of the company is situated; and
- (c) in all other matters, the District Court of Colombo.

(2) An appeal shall lie to the Court of Appeal from any order or judgment of the court upon leave to appeal first being obtained therefrom by an aggrieved party who appeared in such proceedings before the court, within fourteen days after the date of such order or judgment.

(3) Leave to appeal shall be granted under subsection (2) only upon the Court of Appeal being satisfied that unfair prejudice or substantial injustice will be caused to the petitioner unless such leave is granted.

448. Notwithstanding anything contained in any other written law to the contrary –

Trial of
offences and
imposition of
fines

- (a) all offences under this Act may be tried summarily by a Magistrate; and
- (b) a fine may be imposed by a Magistrate for any offence under this Act, notwithstanding that such fine exceeds the amount of the fine which such Magistrate may impose in the exercise of its ordinary jurisdiction.

449. (1) Every application to court under the provisions of this Act shall, unless otherwise prescribed or unless the court otherwise directs, be by way of petition and affidavit, and every person against whom such application is made, shall be named a respondent in the petition and be entitled to be given notice of the same and to object to such application.

Procedure

(2) Every application made to the court in the course of any proceeding under this Act or incidental thereto, shall be made by motion in writing.

(3) The Authority and the Official Receiver shall be entitled to be heard or represented as *amicus curiae* in any application to or proceeding before the court under this Act at any stage of such application or proceeding.

(4) In all proceedings before court by way of application under this Act, no order for costs shall be made against the Authority or the Official Receiver.

Interim relief

450. (1) Pending the making of a final order in any application to court made under this Act, the court may on the application of a party to the proceedings, make, subject to the provisions of subsections (2) and (3), such interim order, including a restraining order, as it thinks fit. Such order may at the discretion of the court, be made *ex parte* after notice to the respondent. The respondent may make an application for an order of revocation or variation of the *ex parte* order, with notice to the petitioner.

(2) The court shall not grant a restraining order or any other form of interim order in respect of such an application, unless the applicant has first lodged with the court an undertaking in writing that if the order sought is granted, and any other person suffers loss or damage which the court considers as just and equitable for the applicant to bear, the applicant will indemnify the other person against that loss or damage.

(3) The court shall, before or at the time of granting a restraining order or any other form of interim order, fix the amount of security which the applicant shall provide for the undertaking given under subsection (2). Security may be provided by depositing funds with the court or by providing a bank guarantee or in such other manner as the court may consider sufficient.

(4) The court may from time to time, on the application of any person who may suffer loss or damage as a consequence of the making or continuation in force of an interim order, increase the amount of security to be provided by the applicant for the undertaking given under subsection (2).

(5) Where an order for an increase in the amount of security to be provided is made, it shall be a condition of the continuation of the interim order, that the increased security be provided within a period specified by the court.

(6) The court may make such orders as it thinks just and equitable—

- (a) by way of enforcement of an undertaking given under subsection (2);
- (b) for the paying out to any person of funds deposited as security under subsection (3); or
- (c) for the investment in an interest bearing bank account, of any funds deposited as security under subsection (3).

451. (1) When a court makes a determination on an application or proceeding, it may, in such manner as may be prescribed, make an order for the payment of costs, including as to – Costs

- (a) payment by a party of another party's costs;
- (b) the amount of costs to be paid; and
- (c) the period of time within which payment is to be made.

(2) A court may, in connection with any legal proceeding and in such manner as may be prescribed, make an order for security for costs.

452. (1) Any order of the court under this Act may be enforced in the same manner in which a decree of the court made in any suit pending in that court may be enforced. Enforcement
of court orders

(2) Where any order of the court under this Act is sought to be enforced by any other court –

- (a) a certified copy of the order shall be sufficient evidence of the order; and

- (b) upon production of such a certified copy, the other court shall take the requisite steps in the matter to enforce the order, in the same manner as if it had been made by that other court.

General
provisions as
to offences

453. (1) Where –

- (a) a person fails to comply with an order of the court under this Act; and
- (b) this Act does not otherwise provide that such a failure is an offence,

the person commits an offence under this subsection and shall be liable on conviction to a fine not less than two hundred thousand rupees and not exceeding two million rupees or to rigorous imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(2) Where –

- (a) a person fails to comply with a provision of this Act;
- (b) the person is not, by reason of the failure, guilty of an offence under subsection (1); and
- (c) this Act does not otherwise provide that such a failure is an offence,

the person commits an offence under this subsection shall and be liable on conviction to a fine not less than one hundred thousand rupees and not exceeding three million rupees.

CHAPTER 4

DELEGATED POWERS TO LEGISLATE

454. (1) The Minister may make Orders on any matter in respect of which Orders are required or authorised to be made under this Act. Orders

(2) Every Order made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of publication.

(3) Every Order made under subsection (1), shall, not later than three months after its publication in the *Gazette*, be placed before Parliament.

(4) Where any monetary amount is specified in this Act, the Minister shall have power, by Order published in the *Gazette*, to fix from time to time any amount in respect thereof, to account for inflation since the coming into operation of this Act.

455. (1) The Minister may make regulations on any matter in respect of which regulations are – Regulations

(a) authorised to be made under this Act; or

(b) required, necessary, or desirable to be made under this Act.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Minister may make regulations in regard to –

(a) the form, content, language (or languages), authentication and sending of, and the amendment to and withdrawal of, notices, reports and other documents, and copies of such notices, reports and other documents, including –

- (i) the time at which such notices, reports and other documents and copies of such notices, reports and other documents are deemed to have been received; and
 - (ii) as regards electronic communications;
- (b) the disclosure, publication, rectification and inspection of documents (including public files and registers), and rights to copies of documents;
- (c) creditor and contributory decision-making;
- (d) the scope of fees, costs, charges and expenses that may be claimed by insolvency office holders;
- (e) the assessment and recovery of, and security for, costs;
- (f) notification of matters to relevant persons and bodies, including the Inland Revenue Department; and
- (g) the structure and operations of the Authority.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, not later than three months after its publication in the *Gazette* be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

456. (1) The Authority may make rules, standards, practice directions, codes of conduct and guidelines on any matter in respect of which rules, standards, practice directions, codes of conduct and guidelines shall be required.

Rules,
standards,
practice
directions,
codes of
conduct and
guidelines

- (a) are authorised to be made under this Act; or
- (b) are required, necessary, or desirable to be made under this Act.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Authority may make rules, standards, practice directions, codes of conduct and guidelines with regard to and in the exercise, performance and discharge by the Authority of its powers, functions and duties.

(3) The Official Receiver may, in consultation with the Authority, make practice directions and guidelines with regard to and in the exercise, performance and discharge by the Official Receiver of its powers, functions and duties.

(4) Every rule, standard, practice direction, code of conduct and guidelines made under this section shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.

PART XVII

Final

CHAPTER 1

APPLICATION

457. Notwithstanding the provisions of any other enactment, the provisions of this Act shall prevail in respect of the matters provided herein.

Application

AMENDMENTS

Amendment of
section 46 of
the Companies
Act

458. In subsection (1) of section 46 of the Companies Act is hereby amended by the substitution for the words “in the course of being wound up” of the words “in administration or in liquidation”.

Amendment of
section 71 of
the Companies
Act

459. Section 71 of the Companies Act is hereby amended in paragraph (d) of subsection (2), by the substitution for the word and figure “Part IX” of the words and figures “Part X of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

Amendment of
section 88 of
the Companies
Act

460. Section 88 of the Companies Act is hereby amended in subsection (1), by the substitution for the word and figure “section 269” of the words “section 342 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

Amendment of
section 92 of
the Companies
Act

461. Section 92 of the Companies Act is hereby amended in subsection (1), by substituting for paragraph (e), of the following paragraph: –

“(e) resolve that a liquidator of the company be appointed under paragraph (a) of subsection (2) section 298 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026;”.

Amendment of
section 97 of
the Companies
Act

462. Section 97 of the Companies Act is hereby amended in paragraph (d) of subsection (2), by the substitution for the words “wound up by the court.” of the words “put into liquidation”.

Amendment of
section 213 of
the Companies
Act

463. Section 213 of the Companies Act is hereby amended –

(a) in paragraph (a) of subsection (1), by the substitution for the words “under this Act”, of

the words and figures “under this Act or under the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”;

- (b) in paragraph (b) of subsection (1), by the substitution for the words “involving dishonest or fraudulent acts;” of the words “of dishonesty or fraud;”;
- (c) by deleting paragraph (c) of subsection (1);
- (d) in paragraph (d) of subsection (1), by the substitution for the words "unsound mind" of the words "unsound mind; or";
- (e) in subsection (1), by the insertion immediately after paragraph (d) thereof of the following new paragraph:-

“(e) is the subject of a court order made under section 411 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”;

- (f) in subsection (1), by the addition, immediately after the words “the management of a company,”, of the words and figures “or be appointed or act as an office holder within the meaning of subsection (1) of section 2 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026,”; and
- (g) by the insertion immediately after subsection (1) thereof of the following new subsection: -

“ (1A) Where a person is subject to a Bankruptcy Order made under section 84 or 90 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026, such person shall not, prior to being discharged

in terms of section 138 or 139 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026, be a director or promoter of or in any way, whether directly or indirectly, be concerned or take part in the management of a company, or be appointed or act as an office holder within the meaning of subsection (1) of section 2 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026, unless that person first makes an application to obtain the leave of the court. Leave may be given on such terms and conditions as the court thinks fit.”.

Amendment of
section 214 of
the Companies
Act

464. Section 214 of the Companies Act is hereby amended –

- (a) in paragraph (c) of subsection (1), by the substitution for the words “an offence of involving dishonest or fraudulent acts”, of the words “an offence of dishonesty or fraud”;
- (b) in paragraph (d) of subsection (1), by the substitution for the words “became insolvent”, of the words “met the insolvency proceeding condition or was dissolved without meeting that condition (in either case whether while the person was a director or subsequently)”;
- (c) in subsection (1), by the insertion immediately after the words “the management of a company,”, of the words and figures “or be appointed or act as an office holder within the meaning of subsection (1) of section 2 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”;
- (d) by the insertion immediately after subsection (1) thereof of the following new subsection:-

“(1A) In deciding whether a person is unfit to be a director of a company for the purposes of paragraph (d) of subsection (1), the court shall have regard in particular to the following matters:—

- (a) any misfeasance or breach of any duty or trust by the person in relation to a company;
 - (b) any contravention by the person of any other legal or regulatory requirement that applied by reason of being a director of a company;
 - (c) the extent (if any) to which the person was responsible for the cause or causes of any contravention by a company of any legal or regulatory requirement applicable to the company;
 - (d) the extent (if any) to which the person was responsible for the cause or causes of a company meeting the insolvency proceeding condition;
 - (e) the number and frequency of the instances of the person’s conduct falling within paragraphs (a), (b), (c) and (d); and
 - (f) the extent of any loss or harm caused by the person’s conduct in relation to a company.”;
- (e) in subsection (3), by the addition, immediately after the words “the Registrar”, of the words “or the Official Receiver”;
- (f) in subsection (5), by the addition , immediately after the words “to the Registrar”, of the words and figures “and the Authority within the meaning of subsection (1) of section 2 of the Rescue, Rehabilitation and

Insolvency (Corporate and Personal) Act,
No. 12 of 2026”;

- (g) by the insertion immediately after subsection (7) thereof of the following new subsections: -

“(8) For the purposes of this section, a company meets the insolvency proceeding condition if –

- (a) the liquidation of the company commences and, with respect to that liquidation, section 302 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026 either does not apply or ceases to apply to the company;
- (b) the administration of the company commences; or
- (c) a receiver is appointed under the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026 in respect of the whole, or substantially the whole, of the property and undertaking of the company.

(9) For the purposes of this section, an overseas company meets the insolvency proceeding condition, if the company enters into an insolvency proceeding of any description (including an interim proceeding) in any jurisdiction.”.

Amendment of
section 220 of
the Companies
Act

465. Section 220 of the Companies Act is hereby amended in subsection (1) –

- (a) by the substitution for the words “director of a company”, of the words “director of a public company”; and
- (b) by the substitution for the word “form”, of the word “from”.

466. Section 228 of the Companies Act is hereby amended by the repeal of paragraph (e) thereof.

Amendment of section 228 of the Companies Act

467. Section 246 of the Companies Act is hereby amended in subsection (5), by the substitution for the words “or the company is wound up,”, of the words “or the liquidation of the company commences,”.

Amendment of section 246 of the Companies Act

468. (1) Section 255 of the Companies Act is hereby amended in the definition of “creditor”, by the substitution for the words “claim in accordance with the provisions of section 357 that a debt is owing to that person by the company”, of the words and figures “submit a proof of debt under subsection (2) of section 426 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

Amendment of section 255 of the Companies Act

(2) Section 256 of the Companies Act is hereby amended in paragraph (b) of subsection (1), by the substitution for the words and figure “under Part XIII;” of the words, and figures “under Part IX of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

(3) Section 257 of the Companies Act is hereby amended in paragraph (d) of subsection (1), by the substitution for the words “the liquidation”, of the words and figures “the liquidation of any company in accordance with Part XII of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

(4) The following new sections are hereby inserted immediately after section 258 of the Companies Act : –

"Declaration to be provided by the directors to court, if creditors are involved

258A. (1) Where any arrangement or amalgamation or compromise under this Part involves creditors, an application under section 256 made by –

(a) all of the directors of the company;
or

- (b) in the case of a company having more than two directors, a majority of the directors of the company,

shall not be entertained by the court unless it is accompanied by a written declaration that meets the conditions in subsection (2).

(2) The conditions referred to in subsection (1) shall be that the declaration –

- (a) states that –

- (i) the directors making the declaration have made a full inquiry into the affairs of the company; and

- (ii) having done so, those directors have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the application is made;

- (b) includes a full statement about the affairs, business, property and financial circumstances of the company –

- (i) showing as at the latest practicable date, and in any event not earlier than ninety days, before the making of the declaration,

- (a) the particulars of its property, including any inventory of stock and the total amount expected to be realised therefrom;

- (b) the debts and other liabilities of the company;

- (c) the name and address of each of its creditors;
 - (d) the encumbrance or encumbrances (if any) held by each creditor; and
 - (e) the date on which each encumbrance was created;
- (ii) supported by affidavit by one or more persons who are, as at the date of the statement, directors of the company;
- (c) is made at a meeting of the directors of the company; and
- (d) is made within the twenty one days immediately preceding the date on which the application is made.

(3) A director making a declaration under subsection (1) without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration commits an offence.

Proceedings
under the
Rescue,
Rehabilitation
and Insolvency
(Corporate and
Personal) Act,
No. 12 of 2026

258B. This Part shall not apply to any proceedings under the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026.”.

469. Section 394 of the Companies Act is hereby amended –

- (a) in subsection (4) –

Amendment of
section 394 of
the Companies
Act

- (i) by the substitution for the words “in the winding up”, of the words “in relation to the liquidation”;
 - (ii) by the substitution for the words “fully wound up”, of the words and figures “the liquidation has ended under section 311 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”; and
 - (iii) by the substitution for the words “subsection (3)”, of the words and figures “subsection (3) and shall give written notice to the Authority within the meaning of subsection (1) of section 2 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026 that this subsection applies”;
- (b) in subsection (5) -
- (i) by the substitution for the words “form the register,”, of the words “from the register,”; and
 - (ii) by the repeal of paragraph (b) thereof, and the substitution therefor of the following :-
 “(b) nothing in the provisions of this subsection shall affect or limit the application of Part XII or section 408 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026 to a company the name of which has been struck off the register.”.

Amendment of
section 431 of
the Companies
Act

470. Section 431 of the Companies Act is hereby amended –

- (a) in paragraph (b) of subsection (5), by the substitution for the word and figure “section 440.”, of the words and figures “section 374 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026.”; and

- (b) in subsection (6) –
 - (i) by the substitution for the words “fixed charge”, of the words “fixed security”;
 - (ii) by, the substitution for the word and figure “section 427”, of the word and figure “section 428,”; and
 - (iii) by the substitution for the words “registered in respect of the land”, of the word “registered”.

471. Section 433 of the Companies Act is hereby amended –

Amendment of
section 433 of
the Companies
Act

- (a) in paragraph (b) of subsection (1) by the substitution for the words “winding up”, of the word “liquidation”;
- (b) in paragraph (b) of subsection (5) by the substitution for all the words from “is accordance” till the end of that paragraph of, the words “in accordance with paragraph (b) of subsection (1) of section 374 of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”; and
- (c) in subsection (6), by the substitution for the word and figure “Part XV,”, of the words and figures “Part XIII of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026,”.

472. Section 529 of the Companies Act is hereby amended in subsection (1) –

Amendment of
section 529 of
the Companies
Act

- (a) in the definition of “director” –
 - (i) in paragraph (b), by the addition, immediately after the figure “197,”, of the words and figures “214(1)(b) and
 - (d) (except the final reference in that paragraph), 214(1A)(b), 214(3),”;

(ii) in paragraph (c) by the addition, immediately after the figure “197,”, of the words and figures “214(1)(b) and (d) (except the final reference in that paragraph), 214(1A)(b), 214(3),”; and

(b) in the definition of “receiver”, by the substitution for the word and figure “Part XV”, of the words and figures “Part XIII of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”.

Amendment
of First
Schedule to
the Companies
Act

473. The First Schedule to the Companies Act is hereby amended in paragraph 34, by the substitution for the words “The shareholders may resolve to wind up the company voluntarily by special resolution.”, of the words, “The shareholders may resolve by special resolution that a liquidator of the company be appointed.”.

Amendment
of Sixth
Schedule to
the Companies
Act

474. The Sixth Schedule to the Companies Act is hereby amended, by the repeal of the following:—

- (a) “Section 401 (Power of board to appoint administrator)”; and
- (b) “Section 415 (Vacancy in office of administrator)”.

Amendment
of Third
Schedule to
the Mediation
Boards Act,
No. 72 of
1988

475. The Third Schedule to the Mediation Boards Act, No. 72 of 1988 is hereby amended by the repeal of paragraph 9 thereof and the substitution therefor of the following: —

“9. Actions under Parts III, IV, V or VI of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026.”.

Amendment
of section 175
of the Inland
Revenue Act,
No. 24 of
2017

476. Section 175 of the Inland Revenue Act, No. 24 of 2017 is hereby amended, in subsection (6) —

- (a) by the repeal of paragraph (a) thereof and the substitution therefor of the following:—

- “(a) a liquidator of an entity, other than a liquidator appointed under Part XII of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026;”;
- (b) in paragraph (b), by the addition, immediately after the words “by a court”, of the words and figures “other than a receiver appointed under Part XIII of the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026”; and
- (c) by the repeal of paragraph (c) thereof.

CHAPTER 2

REPEALS

477. (1) The following provisions of the Companies Act are hereby repealed: – Repeals

- (a) sections 219 and 227;
- (b) Part IX;
- (c) Part XII, except sections 393, 394 and 395;
- (d) Part XIII;
- (e) Part XV;
- (f) section 497; and
- (g) the Seventh Schedule, the Eighth Schedule, the Ninth Schedule, the Tenth Schedule, the Twelfth Schedule and the Thirteenth Schedule.

(2) Section 168 of the Inland Revenue Act, No. 24 of 2017 is hereby repealed.

(3) The Insolvency Ordinance (Chapter 97) is hereby repealed.

CHAPTER 3

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional
Provisions and
Savings

478. (1) Notwithstanding any other provisions of this Act –

- (a) all actions instituted, or proceedings commenced, that are pending; and
- (b) all offices held in respect of such actions or proceedings,

immediately before the date on which this Act comes into operation and relating to insolvency shall be continued and completed as if this Act had not come into operation, and the written law under which such actions were instituted or proceedings were commenced shall be deemed to remain in force.

(2) Notwithstanding the provisions of this Act, the Companies Liquidation Account established under section 396 of the Companies Act shall continue to be operated as if this Act had not come into operation, for a period of five years after the date of completion of all actions or proceedings specified in subsection (1), whereupon all proceeds lying to the credit of the Companies Liquidation Account shall be–

- (a) transferred by the Registrar to the Insolvency Surplus Account; and
- (b) dealt with in accordance with under paragraph (b) of subsection (6) and subsection (7) and subsection (9) of section 432.

(3) Until such date as the Minister first makes an appointment under subsection (1) of section 8, the holder of the office of Official Receiver under the Companies Act immediately before the date on which this Act comes into operation shall continue to hold office as the Official Receiver for the purposes of this Act.

(4) Where this Act does not make provision for the necessary transition from the repealed enactments to this Act, the Minister may make necessary regulations for such transition.

479. (1) For a period of twenty four months after the date of the coming into operation of this Act, or such other period as may be provided by Order, a person shall be deemed to be registered as an Insolvency Practitioner under section 14 so long as the person –

Transitional
provisions:
Insolvency
Practitioners

- (a) consents in writing to be appointed as a key office holder; and
- (b) falls into a category of persons prescribed by regulations, subject to subsection (2).

(2) Until such time regulations are made under paragraph (b) of subsection (1), a person shall be deemed to be registered as an Insolvency Practitioner under section 14 so long as the person –

- (a) consents in writing to be appointed as a key office holder; and
- (b) falls into one or more of the following categories of persons:–
 - (i) Attorney-at-Law with not less than seven years of experience;
 - (ii) Fellow of the Institute of Chartered Accountants;

- (iii) Fellow of the Chartered Institute of Management Accountants; and
- (iv) any person who has served as a liquidator before the date on which this Act comes into operation, including under the Companies Act.

FIRST SCHEDULE

[sections 3 and 5]

PROVISIONS RELATING TO APPOINTED MEMBERS OF THE AUTHORITY

1. The term of office of an appointed member of the Authority shall, unless such member vacates office earlier by death, resignation or removal, hold office for a term of three years from the date of the appointment and unless such member has been removed, shall be eligible for reappointment for not more than one further term, whether consecutive or otherwise. The term of office of the Chairperson shall be the period of membership as an appointed member.

2. A person shall be disqualified from being appointed or continuing as a member of the Authority, if such person –

- (a) is or becomes a Member of Parliament, of any Provincial Council or of any Local Authority;
- (b) is not, or ceases to be, a citizen of Sri Lanka;
- (c) has been or is adjudged an insolvent by a court of competent jurisdiction;
- (d) has been or is found to have a conflict of interest with his duties as a member of the Authority;

- (e) is or becomes unfit to continue in office by reason of illness or other infirmity of mind or body;
- (f) has been or is declared to be of unsound mind by a court of competent jurisdiction; or
- (g) has served or is serving a sentence of imprisonment imposed by any court in Sri Lanka or of any other country.

3. (1) The office of an appointed member of the Authority shall become vacant –

- (a) upon the death of such member;
- (b) upon such member resigning such office by writing addressed to the President and such resignation shall be effective from the date on which it is accepted by the President;
- (c) upon such member being removed from office;
- (d) on being absent from three consecutive meetings of the Authority, without obtaining prior leave in writing;
- (e) engages in any employment outside the duties of his office, during the term of his office; or
- (f) on the expiration of such member's term of office.

(2) The President may remove the Chairperson or an appointed member from such office, on the recommendations of the Constitutional Council, due to dishonesty or becoming disqualified to be a member of the Authority under this Schedule.

(3) (a) If the Chairperson becomes temporarily unable to perform the duties of his office, by reason of illness or other infirmity or due to absence from Sri Lanka or for any other reason, the President may appoint any other member of the Authority to act in place of the Chairperson during such absence.

(b) If an appointed member of the Authority becomes temporarily unable to perform the duties of such office, by reason of illness or other infirmity or due to absence from Sri Lanka or for any other reason, the President may appoint any other qualified person to temporarily act in place of such member during such absence.

(4) In the event a vacancy in the office of any appointed member occurs prior to the expiry of the term of office the President shall follow the same procedure as set out in paragraph (b) of subsection (4) of section 3, and appoint another person to hold such office for the unexpired term of office of the member whom he succeeds.

(5) The period in which a member is appointed as an acting member, shall not be considered as a “term” of office within the meaning of this paragraph.

(6) No act or proceeding of the Authority shall be deemed to be invalid by reason only of the existence of any vacancy among its members, or defect in the appointment of any member.

4. (1) The member of the Authority shall meet at least once a month or as often as may be necessary. The quorum at such meeting shall be five members.

(2) The Chairperson shall preside at all meetings of the Authority. In the absence of the Chairperson at any meeting, the members present at such meeting shall elect one of the members of the Authority to preside at such meeting.

(3) The Chairperson or the member presiding at any meeting of the Authority shall, in addition to his own vote, have a casting vote.

(4) Subject to the other provisions of this Act, the Authority may make rules, to regulate the procedure regarding the conduct of its meetings, and the transaction of business at such meetings.

5. (1) The seal of the Authority shall be in the custody of such person as the Authority may decide from time to time.

(2) The seal of the Authority may be altered in such manner as may be determined by the Authority.

(3) The seal of the Authority shall not be affixed to any instrument or document except with the sanction of the Authority and in the presence of the Chairperson and one other member of the Authority who shall sign the instrument or document in token of their presence:

Provided however, where the Chairperson is unable to be present at the time when the seal of the Authority is affixed to any instrument or document, any other member of the Authority authorised in writing by the Chairperson in that behalf shall be competent to sign such instrument or document in accordance with the provision of this subparagraph.

(4) The Authority shall maintain a register of the instruments and documents to which the seal of the Authority has been affixed.

(5) A person who knowingly or wilfully misuses the seal of the Authority, commits an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding two million rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

6. (1) Subject to the provisions of this Act, the Authority may employ or appoint such officers and employees as may be necessary for the efficient exercise, discharge and performance of its powers, duties and functions.

(2) The Authority shall have the power to –

- (a) exercise disciplinary control over, subject to the provisions of the Act, and dismiss the officers and employees appointed under subparagraph (1);
- (b) determine the terms and conditions of service of officers and employees of the office of the Authority appointed under subparagraph (1); and
- (c) fix the rates at which such officers and employees shall be remunerated with the concurrence of the Minister assigned the subject of Finance.

(3) (a) All officers and employees of the Authority shall, within one month of employment, declare in writing to the Authority their personal interest in the affairs and transactions of the Authority including those of their close relations or concerns in which such officer or employee has either direct or indirect substantial interest.

(b) Where any circumstance, relationship or other fact or matter gives rise to, or could reasonably be perceived as giving rise to, a conflict of interest for the Director-General, or any other officer or employee of the Authority, such person shall immediately-

- (i) make a written disclosure of such circumstance, relationship or other fact or matter to the Authority; and

- (ii) cease to handle or deal with such matter until such person receives further directions from the Authority.

(c) Upon a disclosure being made, the Authority shall decide on how any conflict shall be managed, and may give such directions as may be necessary for such purpose.

(4) The Authority may establish and regulate pension fund and provident fund schemes for the benefit of the officers and employees and their dependants and nominees with the concurrence of the Minister assigned the subject of Finance. The Authority shall make contributions to any such fund or scheme.

(5) The Authority shall establish a code of conduct which shall be applicable to the officers and employees of the Authority.

(6) The Authority shall not appoint any person to the staff of the Authority where such person –

- (a) has been previously found guilty of serious misconduct by a court or tribunal or has been subject to a disciplinary action by a regulatory body;
- (b) has been previously dismissed from office; or
- (c) has committed a breach of the provisions of this Act, regulations or rules made thereunder.

(7) At the request of the Authority, any officer in the public service may, with the consent of the officer and the Public Service Commission be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority or with like consent, be permanently appointed to the staff of the Authority.

(8) Where any officer in the public service is temporarily appointed to the staff of the Authority, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(9) Where any officer in the public service is permanently appointed to the staff of the office of the Authority, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(10) Where the Authority employs any person who has agreed to serve the Government for a specified period, any period of service to the Authority by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.

(11) The Authority may with the consent of such officer or employee propose secondment of its officers or employees to other state institutions or regulatory authorities in Sri Lanka or abroad for a period determined by the Authority on an assignment agreed upon between such institution or authority and the Authority. The period of secondment shall be deemed to be considered as service to the Authority.

7. (1) (a) No order, decision, act or omission of the Authority or any member, officer or employee or any relevant individual shall be questioned in any proceedings or any court of law, save and except in proceedings under Article 126 or 140 of the Constitution.

(b) The writ jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution in relation to any order, decision, act or omission of the Authority or any member, officer or servant thereof, shall be exercised by the Supreme Court and not by the Court of Appeal.

(2) Other than in the circumstances provided for in subparagraph (1)–

- (a) no proceedings civil or criminal, shall be instituted against any member of the Authority or any officer or employee appointed to assist the Authority, other than for contempt against the authority of the Authority, for any act which in good faith is done or omitted from being done, or purported to be done, as such member or officer or employee;
- (b) no proceedings civil or criminal, shall be instituted against any member of the Authority in respect of any report made in good faith by the office of the Authority or against any other person in respect of the publication by such person of a true account of such report; and
- (c) no proceedings civil, criminal or administrative, shall be instituted against any person consequent on such person in good faith providing evidence or documentation to the Authority.

(3) For the purpose of subparagraph (2)(b) and subparagraph (4) “any other person” means –

- (i) an employee or an officer of the Authority;
 - (ii) a former employee or a former officer of the Authority;
 - (iii) the Director-General of the Authority;
 - (iv) a former Director-General of the Authority;
 - (v) a member of any committee of the Authority;
- and

(vi) a former member of any committee of the Authority.

(4) In the event of any suit or prosecution referred to in subparagraph (2) against any other person, the Authority shall bear all reasonable expenses of such person in relation to the proceedings, until the making of the final determination in the proceeding.

8. (1) There shall be a logo for the exclusive use of the Authority.

(2) There shall be a flag to maintain the identity of the Authority.

(3) A person who knowingly or wilfully misuses the logo or the flag of the Authority, commits an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding two million rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

9. All members, officers and employees of the Authority shall be deemed to be public servants within the meaning and for the purpose of the Penal Code (Chapter 19).

10. The Authority shall be deemed to be a Scheduled Institution within the meaning of the Anti-Corruption Act, No. 9 of 2023 and the provisions of that Act shall be construed accordingly.

SECOND SCHEDULE

[section 2]

EXCLUDED ENTITIES

For the purposes of paragraph (b) of the definition of “company” in subsection (1) of section 2, the types of entities excluded shall be -

- (a) any licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988;
- (b) any licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988;
- (c) any banking institution within the meaning of the Central Bank Act, No. 16 of 2023;
- (d) any entity carrying out banking business within the meaning of the Banking Act, No. 30 of 1988;
- (e) any registered finance company within the meaning of the Finance Business Act, No. 42 of 2011;
- (f) any entity carrying out a finance business within the meaning of the Finance Business Act, No. 42 of 2011;
- (g) any insurance company within the meaning of the Regulation of Insurance Industry Act, No. 43 of 2000;
- (h) any entity carrying out insurance business within the meaning of the Regulation of Insurance Industry Act, No. 43 of 2000;
- (i) a microfinance non-governmental organization within the meaning of the Microfinance Act, No. 6 of 2016;
- (j) a licensed microfinance company in terms of the Microfinance Act, No. 6 of 2016; and
- (k) any entity carrying out microfinance business within the meaning of the Microfinance Act, No. 6 of 2016.

THIRD SCHEDULE

[section 2]

CONNECTED PARTIES

1. The term “connected party” in subsection (1) of section 2 relating to a person who is connected to an individual shall be determined in the manner set out below:-

- (a) The individual’s wife or husband, or a relative of the wife or husband of the individual;
- (b) A trustee of a settlement, is connected with –
 - (i) any person who in relation to the settlement, is a settlor, co-trustee or beneficiary;
 - (ii) any person who is connected with such person under the other provisions of this Schedule; and
 - (iii) any body corporate which is connected with that settlement under the other provisions of this Schedule;
- (c) Except in relation to acquisitions or disposals of partnership assets pursuant to *bona fide* commercial arrangements, a person is connected –
 - (i) with any individual with whom the person is in partnership;
 - (ii) with the wife or husband or relative of any individual with whom the person is in partnership; and
 - (iii) with any person who is a relative, or the wife or husband of a relative, of the individual with whom the person is in partnership, or of such individual’s wife or husband;

- (d) An entity is connected with another entity –
 - (i) if the same person has control of both;
 - (ii) if a person has control of one and persons connected with that person, or the person and persons connected with that person, have control of the other; and
 - (iii) if a group of two or more persons has control of each entity, and the groups either consist of the same persons or would consist of the same persons if (in one or more cases) a member of either group were replaced by a person with whom the member is connected; and
- (e) An entity is connected with another person if the person has control of it or if that person and persons connected with that person together have control of it.

2. In this Schedule –

“entity” includes any body corporate or unincorporated association, but does not include a partnership, and this Schedule shall apply in relation to any unit trust scheme as if the scheme were an entity and as if the rights of the unit holders were shares in the entity; and

“relative” means, brother, sister, ancestral or lineal descendant.

FOURTH SCHEDULE

[sections 2 and 275(d)]

PREFERENTIAL CLAIMS IN LIQUIDATION - PRIORITY OF PAYMENT

1. The liquidator shall first pay, in the order of priority in which they are listed –

- (a) the costs, charges and expenses properly incurred by a liquidator or provisional liquidator in the exercise, performance and discharge of the powers, functions and duties of the liquidator or provisional liquidator, as the case may be, the remuneration of a liquidator or provisional liquidator, and the remuneration of a special manager, except such funds as are referred to in paragraph (c);
- (b) the costs, charges and expenses properly incurred by an administrator in the exercise, performance and discharge of the powers, functions and duties of the administrator, including pre-administration costs in relation to the company as agreed or determined in accordance with section 247, and the remuneration of an administrator, except such funds as are referred to in paragraph (c);
- (c) any creditor for any funding provided to the company on or after the commencement of administration or liquidation, including to finance ongoing operations of the company during administration or liquidation, such funding having been properly incurred by an administrator or liquidator as an expense of the administration or liquidation, as the case may be;

- (d) the reasonable costs of a person who applied to the court for an order that the company be put into liquidation incurred in making the application, including the reasonable costs of a person appearing on the application whose costs are allowed by the court;
- (e) the actual out-of-pocket expenses necessarily incurred by an administration creditors' committee, liquidation creditors' committee and liquidation contributories' committee;
- (f) the remuneration of a deed administrator; and
- (g) the debt or liability secured by a lien that the holder of the lien is prohibited from claiming as against the liquidator by reason of subsection (8) of section 325.

2. After paying the claims referred to in paragraph 1, the liquidator shall next pay the following claims: –

- (a) all provident fund dues, employees trust fund dues and statutory gratuity payments payable to any employee;
- (b) income tax charged or chargeable for one complete year prior to the commencement of the liquidation, that year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 24 of 2017;
- (c) turnover tax charged or chargeable for the complete year immediately preceding the date of commencement of the liquidation;
- (d) value added tax charged or chargeable for four taxable periods prior to the commencement of the

liquidation, such taxable periods to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Value Added Tax Act, No. 14 of 2002;

- (e) all rates or taxes other than those referred to in the preceding subparagraphs of this paragraph owing from the company as at the commencement of the liquidation that became due and payable within the period of twelve months prior to that date;
- (f) all dues to the Government as recurring payments for any services given or rendered periodically;
- (g) industrial court awards and other statutory dues payable to any employee;
- (h) subject to paragraph 4, all wages or salary of any employee whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the four months immediately preceding the date of commencement of the liquidation;
- (i) holiday pay becoming payable to an employee (or where the employee has died, to any other person in the employee's right), on the termination of the employment before or by reason of the commencement of the liquidation;
- (j) unless the company has, as at the commencement of the liquidation, rights capable of being transferred to and vested in the employee under a contract of the kind referred to in section 24 of the Workmen's Compensation Ordinance (Chapter 139), amounts due in respect of any compensation or liability for compensation to an

employee under that Ordinance that have accrued before the commencement of the liquidation; and

- (k) subject to paragraph 6, amounts deducted by the company from the wages or salary of an employee, in respect of services rendered to the company during the four months immediately preceding the date of commencement of the liquidation, in order to satisfy obligations of the employee to third parties.

3. The claims listed in paragraph 2 rank equally among themselves and shall be satisfied in full unless the proceeds of realisation of property are insufficient to satisfy them, in which case they shall abate in equal proportions among all of those claims.

4. The sum to which priority is to be given under subparagraph (h) of paragraph 2 shall not, in the case of any one employee, exceed twelve thousand rupees or such greater amount as may be prescribed.

5. Where any compensation under the Workmen's Compensation Ordinance (Chapter 139) is a fortnightly payment, the amount due in respect of that compensation shall, for the purposes of subparagraph (j) of paragraph 2, be the amount of the lump sum for which those payments may be commuted under that Ordinance.

6. The sum to which priority is to be given under subparagraph (k) of paragraph 2 shall not, in the case of any one employee, exceed twelve thousand rupees, or such greater amount as may be prescribed, in each case reduced by the amount of the sum to which priority is to be given under subparagraph (h) of paragraph 2.

7. Where a payment has been made –

- (a) to an employee of the company on account of wages or salary; or

- (b) where an employee of the company has died, to any other person in the employee's right,

out of money advanced by some person for that purpose, the person by whom the money was advanced has in a liquidation the same right of priority in respect of the money so advanced as the employee or other person receiving the payment in the employee's right would have had if the payment had not been made.

8. After paying the claims referred to in paragraph 2, the liquidator shall next pay the amount of any costs referred to in paragraph (d) of section 275.

9. So far as the proceeds of realisation of property of the company available for satisfaction of general claims are insufficient to satisfy the claims listed in each of the paragraphs 1, 2 and 8, the claims listed in those paragraphs shall –

- (a) have priority over the claim of any person in respect of property that is subject to –
 - (i) a floating charge; or
 - (ii) a fixed security ranking behind a floating charge under subsection (2) of section 431 of the Companies Act; and
- (b) be satisfied accordingly out of that property.

10. For the purposes of this Schedule –

- (a) remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be treated as wages in respect of services rendered to the company during that period;
- (b) the expression “holiday pay” in relation to a person includes all sums that by virtue of the

person's contract of employment or any enactment (including any Order made or direction given under any written law) are payable to that person by the company on account of the remuneration that would, in the ordinary course, have become payable to the person in respect of a period of holiday, had the person's period of employment continued until the person became entitled to the holiday; and

- (c) the expression "rates or taxes" means any rate, charge, tax or assessment imposed or made by the Government or by any Provincial Council or local authority or any other authority established by or under any written law.

FIFTH SCHEDULE

[sections 52, 95, 212, 214, 215, 217, 218, 255, 271, 272,
284, 306, 308, 309, 310, 433 and 434]

PROCEDURES FOR MEETINGS OF CREDITORS AND CONTRIBUTORIES

Definition:

1. In this Schedule, "participant" means –

- (a) in the case of a meeting of creditors, a creditor; and
- (b) in the case of a meeting of contributories, a contributory.

2. Method of holding meeting:

A meeting may be held –

- (a) by assembling persons together in a physical place;
- (b) by means of an audio or audio and visual, communication by which, except where a participant chooses not to be heard, participants can simultaneously hear each other; or
- (c) by a combination of the method in paragraph (a) and the method in paragraph (b).

3. Notice:

(1) Written notice of –

- (a) the date, time and place of each meeting to be held under subparagraph (a) of paragraph 2;
- (b) the date, time and joining details of each meeting to be held under subparagraph (b) of paragraph 2; or
- (c) the date, time, place and, where appropriate, joining details of each meeting to be held under subparagraph (c) of paragraph 2,

shall be sent to each participant entitled to attend the meeting.

(2) Unless this Act or any regulation made thereunder provides otherwise, or a court orders otherwise, a notice under subparagraph (1) shall be sent at least five working days before the meeting is to be held.

(3) An irregularity in, or a failure to receive notice of, a meeting does not invalidate anything done at a meeting where –

- (a) the irregularity or failure is not material;

- (b) all of the participants entitled to attend the meeting do so without protest as to the irregularity or failure;
- (c) all of the participants entitled to attend the meeting give their written consent to a waiver of the irregularity or failure.

(4) Where public notice is to be given of a meeting, it shall comply with such requirements as may be prescribed under the Act.

4. Proxies:

(1) A participant entitled to attend and vote at a meeting may do so either in person or by proxy.

(2) A proxy for a participant entitled to attend a meeting is entitled to attend and be heard at the meeting as if the proxy were that participant.

(3) A proxy shall be appointed by written notice, signed by the participant entitled to attend, which shall state whether the appointment is for a particular meeting or for a specified term not exceeding twelve months.

(4) A proxy shall not be effective in relation to a meeting unless a copy of the notice of appointment of the proxy is given to the person convening the meeting before the start of the meeting.

5. Chairperson:

(1) Subject to this paragraph, the person convening the meeting shall act as chairperson of the meeting.

(2) Where the person referred to in subparagraph (1) is not present, the participants entitled to attend the meeting and present in person or by proxy shall choose one of their number to act as chairperson of the meeting.

6. Quorum :

(1) A quorum for a meeting is present where –

- (a) three participants who are entitled to attend or their proxies are present; or
- (b) where the number of participants entitled to attend does not exceed three, all of the participants who are entitled to attend or their proxies are present.

(2) Where a quorum is not present within thirty minutes after the time appointed for the meeting, the meeting shall be adjourned to the same day in the following week and at the same time and place as were appointed for the meeting, or to such other date, time and place as the chairperson may determine and where, at the adjourned meeting, a quorum is not present within thirty minutes after the time appointed for the meeting, the participants entitled to attend who are present or their proxies are a quorum.

7. Resolutions:

(1) At any meeting of creditors or contributories, other than a meeting held for the purposes of any of Parts IV, IX, X and XI, a resolution may be adopted where both –

- (a) those participants voting in favour of the resolution represent a majority, in number, of all of the participants voting on the resolution; and
- (b) the claims of those participants voting in favour of the resolution represent a majority in value of the claims of all of the participants voting on the resolution.

(2) At any meeting of creditors held for the purposes of Part IX, a resolution may be adopted where both –

- (a) those creditors voting in favour of the resolution represent a majority, in number, of all of the creditors voting on the resolution; and
- (b) the claims of those creditors voting in favour of the resolution represent at least seventy-five per cent in value of the claims of all of the creditors voting on the resolution.

(3) At any meeting of creditors held for the purposes of Part X , a resolution may be adopted where both –

- (a) those creditors voting in favour of the resolution represent a majority in number of all of the creditors, or of all of the creditors in the class of creditors, voting on the resolution; and
- (b) the claims of those creditors voting in favour of the resolution represent at least 75 per cent in value of the claims of all of the creditors, or of all of the creditors in the class of creditors, voting on the resolution.

(4) In the vote on a resolution, the vote of any participant who is not entitled to vote on the resolution shall be excluded from the calculations in subparagraphs (a), (b) and (c).

8. Minutes:

(1) The chairperson shall ensure that minutes are kept of proceedings at a meeting.

(2) Minutes of a meeting that are signed as correct by the chairperson are *prima facie* evidence of the proceedings at that meeting.

(3) Minutes of a meeting shall be delivered to and retained by such persons and in compliance with such requirements as may be prescribed.

(4) On an application to the court by an interested person, the court may order that the applicant may inspect the minutes of a meeting on such terms and conditions as necessary.

9. Adjourned meetings:

(1) Without prejudice to subparagraph (2) of paragraph 6, adjournments of meetings shall be subject to such restrictions and limitations as may be prescribed.

(2) Where a resolution is passed at an adjourned meeting, the resolution –

(a) shall for all purposes be treated as having been passed on the date on which it was in fact passed; and

(b) shall not be deemed to have been passed on any earlier date.

(3) Subparagraph (1) of paragraph 3 shall apply to an adjourned meeting unless the meeting is adjourned for less than six working days.

10. Miscellaneous:

(1) A person entitled to vote at a meeting may, if prescribed, do so by postal vote, by following such procedure as may be prescribed.

(2) For the purposes of subparagraph (1), “postal vote” includes a vote by such electronic means as may be prescribed.

(3) Where a participant does not attend a meeting, this shall not prejudice an entitlement of the participant to attend any subsequent meeting.

(4) Subject to the requirements of this Act, a meeting may regulate its own procedure.

SIXTH SCHEDULE

[section 127]

MANAGEMENT IN BANKRUPTCY OF ESTATE OF PERSON DYING INSOLVENT

1. Management in bankruptcy of estate of person dying insolvent:

Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the management of the estate of the deceased debtor, according to the law of bankruptcy.

2. The order:

Upon the prescribed notice being given to the personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owed by the deceased, the court may make an order for the management in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

3. Property to vest in the Official Receiver -

(a) Upon an order being made for the management of a deceased debtor's estate, the property of the debtor shall vest in the Official Receiver, as trustee thereof, and he shall forthwith proceed to

realize and distribute it in accordance with the provisions of this Act;

- (b) Creditors shall have the same powers as to appointment of Bankruptcy Trustees and Creditors' Committees as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act, relating to Bankruptcy Trustees and Creditor Committees, shall apply to Bankruptcy Trustees and Creditors' Committees appointed under the power so conferred; or
- (c) If no Creditors' Committee is appointed, any act or thing or any direction or permission which might have been done or given by a Creditors' Committee may be done or given by the court.

4. Application of Act:

With the modifications hereinafter mentioned, all the provisions of Part VI shall, subject to modifications that may be prescribed, apply to a management order under this Schedule in like manner as to a Bankruptcy Order under this Act.

5. Priority of claims -

- (a) In the management of the property of the deceased debtor under an order of management, the Official Receiver or Bankruptcy Trustee shall, have regard to any claim by the personal representative of the deceased debtor, to make payment of the proper funeral and testamentary expenses incurred by such personal representative relating to the debtor's estate; or

- (b) Claims of the type specified in paragraph (a) shall be deemed a preferential debt under the order and shall, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

6. Surplus:

If, on the management of a deceased debtor's estate, any surplus remains in the hands of the Official Receiver or Bankruptcy Trustee, after payment in full of all the debts due from the debtor, together with the costs of the management and interest as provided by this Act in case of Bankruptcy, such surplus shall be paid to the personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

7. Effect of notice to the personal representative of the presentation of the petition -

- (a) Notice to the personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for management being made thereon, be deemed to be equivalent to the notice of the bankruptcy petition;
- (b) After such notice no payment or transfer of property made by the personal representative shall operate as a discharge to him as between himself and the Official Receiver or Bankruptcy Trustee; and
- (c) Save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the personal representative before the date of the order for management.

8. Personal representative may present a petition:

A petition for the management of the estate of a deceased debtor under this Schedule may be presented by the personal representative of the debtor, and, where a petition is so presented by such a representative, this Schedule shall apply subject to such modifications as may be prescribed.

9. "Creditor":

Unless the context otherwise requires, "creditor", in this Schedule, means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

SEVENTH SCHEDULE

[section 232]

POWERS OF ADMINISTRATOR

1. Every administrator appointed under Part IX shall have the power to –

- (a) take possession of, collect and get in property of the company;
- (b) sell or otherwise dispose of property of the company by public auction, private auction or private contract;
- (c) demand and recover, by action or otherwise, income of property of the company;
- (d) issue receipts for income recovered;
- (e) insure, and maintain insurance in respect of, the business and property of the company;
- (f) repair and maintain property of the company;

- (g) inspect any books, records or documents relating to the affairs, business, property and financial circumstances of the company that are in the possession or custody or under the control of the company;
- (h) exercise a right to inspect books, records or documents relating to the affairs, business, property and financial circumstances of the company that are in the possession or custody or under the control of a person other than the company;
- (i) raise or borrow money from any person, whether or not a creditor or shareholder, whether with or without granting security for such money over property of the company;
- (j) appoint a lawyer or accountant or other professionally qualified person to assist the administrator within the exercise, performance and discharge of the administrator's powers, functions and duties;
- (k) begin or defend, and continue or discontinue, any legal process or other legal proceeding, and levy distress, in the name and on behalf of the company;
- (l) refer to mediation or arbitration, or to any ombudsman, any question affecting the company;
- (m) use the company's common seal if it has one;
- (n) do all acts, and execute any contract, deed or other document, in the name and on behalf of the company;
- (o) draw, accept, endorse and hold any bill of exchange or promissory note in the name and on behalf of the company;

- (p) appoint any agent to do any business which the administrator is unable to do on the administrator's own, or which can more conveniently be done by an agent;
- (q) engage, dismiss or seek permission of the appropriate authority for the dismissal of employees;
- (r) do all such things (including the carrying out of works) as may be necessary for the realisation of property of the company;
- (s) make any payment necessary or incidental to the exercise, performance and discharge of the administrator's powers, functions and duties;
- (t) carry on the business of the company;
- (u) establish subsidiaries of the company;
- (v) transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (w) grant, or accept a surrender of, a lease or tenancy of, or hiring of, any property of the company, and to take a lease or tenancy of or hire any property required or convenient for the business of the company;
- (x) propose or assent to any arrangement, amalgamation or compromise on behalf of the company, where permitted under the corresponding procedure;
- (y) where a person owes a debt or is otherwise under a liability to the company –

- (i) vote, prove and rank the debt or other liability in the bankruptcy, insolvency or liquidation of that person, and receive distributions as a creditor of that person; and
- (ii) vote, receive distributions, and otherwise participate as a creditor in a Debt Restructuring Arrangement of that person, where permitted under the corresponding procedure;
- (z) make an application to the court for the appointment of a liquidator of the company;
- (aa) change the registered office or address for service of the company;
- (bb) acquire any property required or convenient for the business of the company;
- (cc) grant an option over property of the company;
- (dd) renew or enlarge property of the company;
- (ee) permit any person to operate any account in the name and on behalf of the company;
- (ff) file any tax return and pay any taxes due;
- (gg) remove a director of the company;
- (hh) consult with an administration creditors' committee about matters relating to the administration convene a meeting of creditors, of shareholders or of an administration creditors' committee, where permitted or required under section 218, for –
 - (i) the purpose of –

- (a) informing them of progress of in the administration;
 - (ii) ascertaining their views on any matter arising in the administration;
or
 - (iii) any other purpose connected with the administration;
- (ii) make calls on the contributories of the company in respect of uncalled capital and other liabilities;
- (jj) do all other things necessary for or incidental to the exercise of the powers set out in this paragraph; and
- (kk) do such other things as the court may approve for the economic and expeditious conduct of the administration.

EIGHTH SCHEDULE

[sections 333 and 426]

SECURED CREDITORS' OPTIONS

1. A secured creditor holding a fixed security over property of a company may –
 - (a) enforce the security, where the secured creditor is entitled to do so; or
 - (b) surrender the property subject to the security to the liquidator for the benefit of the creditors as a whole and claim as an unsecured creditor for the whole debt.

2. A secured creditor who exercises the option referred to in subparagraph (a) of paragraph 1 shall account to the liquidator for any surplus remaining from the net amount realised, after –
 - (a) satisfaction of any debt owing to the grantee of any fixed security over any part of the property that ranks prior to the secured creditor's fixed security, determined as at the relevant date; and
 - (b) satisfaction of the full amount of the debt, determined as at the relevant date.
3. A liquidator may, by written notice, require a secured creditor within twenty working days after receiving the notice –
 - (a) to exercise the option referred to in subparagraph (a) of paragraph 1 or the option referred to in subparagraph (b) of paragraph 1; and
 - (b) if the creditor elects to exercise the option referred to in subparagraph (b) of paragraph 1, to do so within that period.
4. A secured creditor on whom a notice has been served under paragraph 3 and who fails to comply with the notice –
 - (a) is to be taken as having surrendered the property subject to the security to the liquidator for the benefit of the creditors as a whole; and
 - (b) may claim as an unsecured creditor for the whole debt.

NINTH SCHEDULE

[section 329]

POWERS OF LIQUIDATOR

1. Every liquidator appointed under Part XII shall have the power to –
 - (a) take possession of, collect and get in property of the company;
 - (b) sell or otherwise dispose of property of the company by public auction, private auction or private contract;
 - (c) demand and recover, by action or otherwise, income of property of the company;
 - (d) issue receipts for income recovered;
 - (e) insure, and maintain insurance in respect of, the business and property of the company;
 - (f) repair and maintain property of the company;
 - (g) inspect any books, records or documents relating to the affairs, business, property and financial circumstances of the company that are in the possession or custody or under the control of the company;
 - (h) exercise a right to inspect books, records or documents relating to the affairs, business, property and financial circumstances of the company that are in the possession or custody or under the control of a person other than the company;

- (i) raise or borrow money from any person, whether or not a creditor or shareholder, whether with or without granting security for such money over property of the company;
- (j) appoint a lawyer or accountant or other professionally qualified person to assist the liquidator in the exercise, performance and discharge of the liquidator's powers, functions, and duties;
- (k) begin or defend, and continue or discontinue, any legal process or other legal proceeding, and levy distress, in the name and on behalf of the company;
- (l) refer to mediation, arbitration or to any ombudsman, any question affecting the company;
- (m) use the company's common seal if it has one;
- (n) do all acts, and execute any contract, deed or other document, in the name and on behalf of the company;
- (o) draw, accept, endorse and hold any bill of exchange or promissory note in the name and on behalf of the company;
- (p) appoint any agent to do any business which the liquidator is unable to do on the liquidator's own, or which can more conveniently be done by an agent;
- (q) engage, dismiss, or seek permission of the appropriate authority for the dismissal of, employees;
- (r) do all such things (including the carrying out of works) as may be necessary for the realisation of property of the company;

- (s) make any payment necessary or incidental to the performance, exercise and discharge of the liquidator's functions, powers and duties;
- (t) carry on the business of the company so far as may be necessary for the liquidation;
- (u) establish subsidiaries of the company;
- (v) transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (w) grant or accept a surrender of, a lease or tenancy of, or hiring of, any property of the company, and to take a lease or tenancy of or hire any property required or convenient for the business of the company;
- (x) propose or assent to any arrangement, amalgamation or compromise on behalf of the company, where permitted under the corresponding procedure;
- (y) where a person owes a debt or is otherwise under a liability to the company –
 - (i) vote, prove and rank the debt or other liability in the bankruptcy, insolvency or liquidation of that person, and receive distributions as a creditor of that person; and
 - (ii) vote, receive distributions, and otherwise participate as a creditor in a Debt Restructuring Arrangement of that person, where permitted under the corresponding procedure;
- (z) appoint an administrator of the company, where permitted under Part IX;

- (aa) change the registered office or address for service of the company;
- (bb) acquire any property required or convenient for the business of the company;
- (cc) grant an option over property of the company;
- (dd) renew or enlarge property of the company;
- (ee) allow any person to operate any account in the name and on behalf of the company;
- (ff) file any tax return and pay any taxes due;
- (gg) remove a director of the company;
- (hh) consult with a liquidation creditors' committee about matters relating to the liquidation;
- (ii) consult with a liquidation contributories' committee about matters relating to the liquidation;
- (jj) convene a meeting of creditors, of shareholders, of contributories, of a liquidation creditors' committee or of a liquidation contributories' committee, where permitted or required under section 310 for –
 - (i) the purpose of informing them of progress in the liquidation; and ascertaining their views on any matter arising in the liquidation;
 - (ii) any other purpose connected with the liquidation;
- (kk) make a compromise or an arrangement with creditors or persons claiming to be creditors

- or who have or allege the existence of a claim against the company, whether present or future, whether certain or contingent, and whether ascertained or sounding in damages, but such a compromise or arrangement shall not provide for a distribution other than in accordance with creditors' legal rights;
- (ll) make calls on the contributories of the company in respect of uncalled capital and other liabilities;
 - (mm) compromise calls, debts and other liabilities, whether present or future, whether certain or contingent, and whether ascertained or sounding in damages, subsisting or supposed to subsist between the company and any person, on such terms as may be agreed, take security for the discharge of any such call, debt or liability and give a complete discharge in respect thereof;
 - (nn) do all other things necessary for or incidental to the exercise of the powers set out in this paragraph; and
 - (oo) do such other things as the court may approve for the economic and expeditious conduct of the liquidation.

TENTH SCHEDULE

[section 376]

POWERS OF RECEIVER

1. Every receiver appointed under Part XIII shall, subject to any restriction or limitation on the receiver's powers under the instrument or the order of the court by or under which the appointment was made, have the power to –

- (a) take possession of, collect and get in the property in receivership;
 - (b) sell or otherwise dispose of the property in receivership by public auction, private auction or private contract;
 - (c) demand and recover, by action or otherwise, income of the property in receivership;
 - (d) issue receipts for income recovered;
 - (e) manage the property in receivership;
 - (f) insure and maintain insurance in respect of the property in receivership;
 - (g) repair and maintain the property in receivership;
 - (h) inspect at any reasonable time and place books, records or documents that relate to the property in receivership that are in the possession or custody or under the control of the grantor;
 - (i) exercise on behalf of the grantor, a right to inspect books, records or documents that relate to the property in receivership that are in the possession or custody or under the control of a person other than the grantor;
 - (j) make any payment necessary or incidental to the exercise, performance and discharge of the receiver's powers, functions and duties; and
 - (k) do all other things necessary for or incidental to the exercise of the powers set out in this paragraph.
2. Without prejudice to paragraph 1, a receiver who is appointed in respect of the whole, or substantially the

whole, of the property and undertaking of a company shall, subject to any restriction or limitation on the receiver's powers under the instrument or the order of the court by or under which the appointment was made, have the power to –

- (a) raise or borrow money from any person, whether or not a creditor or shareholder, whether with or without granting security for such money over the property of the company;
- (b) appoint a lawyer or accountant or other professionally qualified person to assist the administrator with the exercise, performance and discharge of the administrator's powers, function and duties;
- (c) begin or defend, and continue or discontinue, any legal process or other legal proceeding, and levy distress, in the name and on behalf of the company;
- (d) refer to mediation, arbitration or to any ombudsman, any question affecting the company;
- (e) use the company's common seal if it has one;
- (f) do all acts, and execute any contract, deed or other document, in the name and on behalf of the company;
- (g) draw, accept, endorse and hold any bill of exchange or promissory note in the name and on behalf of the company;
- (h) appoint any agent to do any business which the receiver is unable to do on the receiver's own, or which can more conveniently be done by an agent;

- (i) engage, dismiss or seek permission of the appropriate authority for the dismissal of employees;
- (j) do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company;
- (k) insure and maintain insurance in respect of the business of the company;
- (l) carry on the business of the company;
- (m) establish subsidiaries of the company;
- (n) transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (o) grant or accept a surrender of, a lease or tenancy of, or hiring of, any property of the company, and to take a lease or tenancy of or hire any property required or convenient for the business of the company;
- (p) propose or assent to any arrangement, amalgamation or compromise on behalf of the company, where permitted under the corresponding procedure;
- (q) where a person owes a debt or is otherwise under a liability to the company –
 - (i) vote, prove and rank the debt or other liability in the bankruptcy, insolvency or liquidation of that person, and receive distributions as a creditor of that person; and

- (ii) vote, receive distributions and otherwise participate as a creditor in a Debt Restructuring Arrangement of that person,

make an application to the court for the appointment of a liquidator of the company where permitted under the corresponding procedure;

- (r) appoint an administrator of the company, where permitted under Part IX;
- (s) change the registered office or address for service of the company;
- (t) acquire any property required or convenient for the business of the company;
- (u) grant an option over property of the company;
- (v) renew or enlarge property of the company;
- (w) allow any person to operate any account in the name and on behalf of the company;
- (x) file any tax return and pay any taxes due;
- (y) do all other things as may be necessary for or incidental to the exercise of the powers set out in this paragraph.

Sinhala text
to prevail
in case of
inconsistency

480. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

