

RULES AND FEES

Rules and fees
for winding up.

399. (1) Rules may be made by the Minister to provide for the carrying into effect of the objects of this Act, so far as it relates to the winding up of companies.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies, such reasonable fees as the Minister may, by regulation, prescribe.

PART XIII

ADMINISTRATORS

APPOINTMENT OF ADMINISTRATOR

Interpretation.

400. In this Part of this Act, unless the context otherwise requires —

(a) “initial period” means the period beginning from the date of appointment of the administrator, until—

(i) the date on which a meeting is held under section 404 ; or

(ii) a receiver is appointed in accordance with the provisions of subsection (2) of section 402 ; or

(iii) the expiry of twenty working days, or such longer period as court may allow,

whichever occurs first ; and

(b) references to hire-purchase agreements include conditional sale agreements, chattel leasing arrangements and retention of title agreements.

401. (1) Subject to the provisions of subsection (4) of this section, where the board of a company considers that—

Power of board to appoint administrator.

- (a) the company is or is likely to become unable to pay its debts as they fall due ; and
- (b) the appointment of an administrator will be likely to achieve one or more of the purposes referred to in subsection (2),

the board may resolve to appoint an administrator of a company.

(2) The purposes for which an administrator may be appointed are —

- (a) the survival of the company and the whole or any part of its undertaking as a viable concern ;
- (b) the preparation and approval of a compromise under Part IX or a compromise or arrangement under Part X ; or
- (c) a more advantageous realisation of the company's assets than would be likely on a winding up.

(3) A resolution appointing an administrator shall specify the purpose or purposes for which the appointment is being made, and once passed may not be rescinded without the leave of the court.

(4) A resolution shall not be passed by the board under this section where—

- (a) an order has been made for the winding up of the company ;
- (b) a receiver has been appointed in respect of the whole of the property and undertaking of the company,

unless the person by whom or on whose behalf the receiver was appointed has consented to the making of the order ; or

- (c) an administrator has been appointed by the company on a previous occasion, unless the leave of the court to make the further appointment is first obtained.

(5) A resolution passed in contravention of subsection (4) shall be void and of no effect.

Notice to charge holders of appointment of administrator.

402. (1) Where the board of a company appoints an administrator, the company shall forthwith give notice of the appointment and of the identity of the person who has been appointed as administrator, to any person who is entitled to appoint a receiver of the property and undertaking of the company.

(2) At any time within ten working days from the date on which notice has been given under subsection (1), a person who is entitled to appoint a receiver of the property and undertaking of the company may make such an appointment. Upon the appointment of such a receiver, the administrator shall immediately cease to hold office.

Effect of appointment of administrator.

403. (1) From and after the appointment of an administrator, until the end of the initial period—

- (a) no resolution may be passed or order made for the liquidation of the company ;
- (b) subject to the provisions of subsection (2) of section 402, no steps be taken to enforce any security over any property of the company or to repossess any goods in the company's use or possession under any hire-purchase agreement, except with the consent of the administrator or with the leave of the court and subject to such terms as the court may impose ;

- (c) no other proceedings and no execution or other legal process may be commenced or continued and no distress may be levied against the company or its property, except with the consent of the administrator or with the leave of the court and subject to such terms as the court may impose.

(2) Nothing in subsection (1) requires the leave of the court, for—

- (a) filing a petition to wind up the company ; or
- (b) giving notice in relation to a default under a charge over property of the company or under an agreement relating to property in the use, possession or occupation of the company.

INITIAL MEETING AND CONFIRMATION OF APPOINTMENT

404. (1) An administrator shall within ten working days of being appointed, send a written notice to all creditors of the company so far as he is aware of their addresses—

Duty of administrator to summon initial meeting.

- (a) advising them of the appointment of an administrator ; and
- (b) calling a meeting of creditors to consider whether the appointment should be confirmed.

(2) Where no meeting of creditors is held before the expiry of the initial period, the administrator shall cease to hold office at the expiry of that period.

(3) A meeting of creditors called under this section shall be conducted in accordance with the procedures specified in the Seventh Schedule, save that all creditors shall vote as one class.

(4) Where a meeting of creditors under this section does not confirm the appointment of the administrator, the administrator shall cease to hold office with effect from the close of the meeting.

(5) Where a meeting of creditors under this section confirms the appointment of the administrator, the administrator shall continue in office and shall prepare proposals in accordance with the provisions of section 406.

Effect of
confirmation
of
administrator.

405. (1) During the period for which an administrator holds office after the expiry of the initial period—

- (a) no resolution may be passed or order made for the winding up of the company ;
- (b) no receiver of the property of the company may be appointed ;
- (c) no other steps may be taken to enforce any security over any property of the company or to re-possess any goods in the company's use or possession under any hire-purchase agreement, except with—
 - (i) the consent of the administrator ; or
 - (ii) the leave of the court and subject to such terms as the court may impose ;
- (d) no other proceedings and no execution or other legal process may be commenced or continued and no distress may be levied against the company or its property, except with—
 - (i) the consent of the administrator ; or
 - (ii) the leave of the court and subject to such terms as the court may impose ;

(2) Nothing in subsection (1) requires the consent of the administrator or the leave of the court for—

- (a) filing a petition to wind up the company ; or
- (b) giving notice in relation to a default under a charge over property of the company or under an agreement relating to property in the use, possession, or occupation of the company.

ADMINISTRATOR'S PROPOSALS

406. (1) Within two months after the end of the initial period or such longer period as the court may allow, the administrator shall—

Statement of proposals.

- (a) prepare a statement of his proposals for achieving the purpose or purposes specified in the order appointing him ;
- (b) deliver a copy of the statement to the Registrar ;
- (c) send a copy of the statement to all creditors of the company so far as he is aware of their addresses.

(2) The administrator shall call a meeting of creditors to consider the statement, not less than five and not more than ten working days after the date on which copies of the statement had been sent to creditors.

(3) The administrator shall also within two months of the date of his appointment and before the date of the meeting of creditors to consider the statement, either—

- (a) send a copy of the statement to all shareholders of the company ; or
- (b) give public notice of an address at which shareholders of the company can obtain a copy of the statement free of charge.

(4) Where an administrator fails to comply with the requirements of this section he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Consideration of proposals by creditors' meeting.

407. (1) A meeting of creditors called under the provisions of section 406 shall decide whether to approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, if the administrator consents to the modifications.

(3) The meeting shall be conducted in accordance with the procedure specified in the Seventh Schedule and within ten working days of such meeting the administrator shall give notice of the result to the Registrar.

(4) Where the administrator's proposals are approved, the administrator shall continue in office if the proposals so provide or shall cease to hold office in the circumstances set out in the proposals.

(5) Where the administrator's proposals are not approved, the administrator shall cease to hold office five working days after the date of the meeting.

(6) Where the administrator fails to comply with the requirements of subsection (4) he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Consequential orders where administrator cease to hold office.

408. The court may on the application of a company or an administrator or former administrator, make such orders consequential upon the discharge of an administrator as it thinks fit.

Approval of substantial revisions to proposals.

409. (1) Where—

(a) the proposals of the administrator have been approved under section 407 ; and

- (b) the administrator proposes to make substantial revisions to those proposals,

the administrator shall send to all creditors of the company so far as he is aware of their addresses, a written statement of the proposed revisions.

(2) The administrator shall call a meeting of the creditors to consider the revisions, not less than five and not more than ten working days after the date on which copies of the statement had been sent to the creditors.

(3) The administrator shall also before the date of the scheduled meeting of the creditors to consider the statement, either—

- (a) send a copy of the statement to all shareholders of the company ; or
- (b) give public notice of an address at which shareholders of the company can obtain a copy of the statement free of charge.

(4) The meeting may approve the proposed revisions with modifications, if the administrator consents to the modifications.

(5) The meeting shall be conducted in accordance with the procedure specified in the Seventh Schedule, and at the conclusion of such meeting the administrator shall give notice of the result of the meeting to the Registrar.

NOTICE OF ADMINISTRATION

410. (1) An administrator shall forthwith after being appointed—

Notice of
appointment of
administrator.

- (a) give public notice of his appointment, including—
 - (i) his full name ;

(ii) the date of the appointment ;

(iii) his office address ; and

(b) send a copy of the public notice to the Registrar.

(2) Where the administrator fails to comply with the requirements of this section he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Notice of
administration

411. (1) Where an administrator is appointed in respect of a company, every agreement entered into and every document issued by or on behalf of the company or the administrator and on which the name of the company appears, shall state clearly that an administrator has been appointed.

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

(3) Every person who—

(a) contravenes the requirements of subsection (1); or

(b) knowingly or willfully authorises or permits a contravention of subsection (1),

shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

THE ADMINISTRATOR

Qualifications of
administrator.

412. (1) The following persons may not be appointed or act as administrator of a company :—

(a) a person who is under eighteen years of age;

(b) a creditor of the company;

- (c) a person who is or who has within the period of two years immediately preceding the commencement of the receivership, been an officer or employee of the company;
 - (d) a person who has or who has had within the period of two years preceding the commencement of the administration, an interest whether direct or indirect, in a share issued by the company;
 - (e) a person who is an undischarged insolvent;
 - (f) a person who has been adjudged to be of unsound mind under the Mental Diseases Ordinance (Cap. 227);
 - (g) a person in respect of whom an order has been made under subsection (5) of section 468;
 - (h) a person who was prohibited from being a director of or being concerned or taking part in the promotion, formation or management of a company under section 188 of the Companies Act, No. 17 of 1982, or who would be so prohibited but for the repeal of that Act; or
 - (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214.
- (2) A body corporate shall not be appointed or act as an administrator.
- (3) A person who acts in contravention of subsection (1) or subsection (2), shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Validity of
acts of
administrator.

413. Any act done by a person as an administrator shall be valid notwithstanding the fact that such person is not qualified to act as an administrator.

Consent to
be
appointed.

414. The appointment of a person as an administrator shall be of no effect, unless that person consents in writing to being appointed as an administrator.

Vacancy in
office of
administrator.

415. (1) The office of administrator shall become vacant if the person holding that office resigns, dies, is removed from office by the court or becomes disqualified under section 412.

(2) A person may resign from the office of administrator by appointing another person as his successor, and delivering notice in writing of the appointment of his successor to the company and to the Registrar.

(3) The court may on the application of the company or a shareholder or a director or creditor of the company or the Registrar, review the appointment of a successor to an administrator and may if it thinks fit, appoint another person to be the administrator of the company in his place.

(4) Where for any reason other than resignation a vacancy occurs in the office of administrator, written notice of the vacancy shall forthwith be delivered to the company and to the Registrar by the person vacating office or, if that person is unable to act, by his personal representative .

(5) If as the result of the vacation of office by an administrator no person is appointed to act as administrator, the board of the company may appoint a person to act as administrator.

(6) Where a vacancy occurs in the office of administrator or a person has been appointed to act as an administrator under subsection (5), as the case may be, the court may on the application of the company or a shareholder or director or creditor of the company or the Registrar, appoint another person to be the administrator of the company.

(7) An administrator appointed under subsection (5) or subsection (6) shall, within ten working days of being appointed deliver a notice of his appointment to the Registrar.

(8) An administrator may at any time be removed from office by the court.

(9) A person vacating the office of administrator shall where practicable, provide such information and give such assistance to his successor as that person may reasonably require.

(10) On the application of a person appointed to fill a vacancy in the office of administrator, the court may make any order that it considers necessary or desirable to facilitate the performance of the administrator's duties.

(11) Every person who fails without reasonable excuse to comply with the requirements of subsection (4) or who fails to comply with the provisions of subsection (7) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

POWERS OF ADMINISTRATOR

416. (1) An administrator—

Powers of
administrators.

- (a) shall manage the affairs, business and property of the company;
- (b) may do all such things as may be necessary or desirable for the management of the affairs, business and property of the company;
- (c) without limiting the powers specified in paragraphs (a) and (b), shall have all the powers that could be exercised by a receiver of the whole of the property and undertaking of the company under sections 443, 445 and 446.

(2) The administrator may apply to the court for directions in relation to any matter arising in connection with the carrying out of his functions.

(3) Where the exercise of any power conferred on the company or its board or officers by this Act or by the company's articles could interfere with the exercise by the administrator of his powers, such power shall not be exercised by the company, its board or officers, as the case may be, except with the consent of the administrator, which may be given generally or in relation to particular cases.

(4) Without limiting the generality of subsection (3), any disposal or other dealing with the property of the company without first obtaining the consent of the administrator, which may be given generally or in relation to particular cases, shall unless the court otherwise orders, be void.

(5) In exercising his powers the administrator is deemed to act as 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 his powers.

Power to deal
with charged
property &c.,

417. (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies, as if the property were not subject to the security.

(2) Provisions of subsection (1) shall apply to any security which, when it was created, was a floating charge.

(3) Where on an application by the administrator, the court is satisfied that the disposal (with or without other assets) of—

- (a) any property of the company subject to a security to which subsection (1) does not apply; or

- (b) any goods in the possession of the company under a hire-purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the order appointing the administrator, the court may by order authorise the administrator to—

- (c) dispose of the property as if it were not subject to the security; or
- (d) dispose of the goods as if all rights of the owner under the hire purchase agreement were vested in the company.

(4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of, as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order made by the court under subsection (3) that—

- (a) the net proceeds of the disposal; and
- (b) where those proceeds are less than such amount as may be determined by the court to be the net amount that would be realised on a sale of the property or goods in the open market, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security, or payable under the hire purchase agreement.

(6) Where a condition imposed under subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and any sum mentioned in paragraph (b) of that subsection to be applied towards discharging the sums secured by those securities, in the order of their priorities.

(7) A copy of any order made under subsection (3) shall within ten working days after the making of the order, be sent by the administrator to the Registrar.

(8) Where the administrator fails to comply with the requirements of subsection (7), he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

General duties
of administrator.

418. (1) The administrator on his appointment shall take into his custody or control, all the property to which the company is or appears to be entitled.

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

- (a) at any time before a proposal has been approved under section 407 in accordance with any directions of the court; and
- (b) at any time after a proposal has been so approved, in accordance with the proposal as from time to time revised and with any directions of the court.

(3) The administrator shall summon a meeting of the creditors of the company if—

- (a) he is requested to do so in writing by one tenth in value of the creditors; or
- (b) he is directed to do so by the court.

Discharge of
administrator or
variation of
resolution
appointing
administrator.

419. (1) The administrator shall, where—

- (a) it appears to him that the purpose or each of the purposes specified in the resolution appointing him either have been achieved or is incapable of achievement;

- (b) he is required to do so by a meeting of the company's creditors summoned for the purpose,

may at any time, give notice to the company notifying that the—

- (c) administration ought to be terminated; or
- (d) resolution appointing him as administrator ought to be varied to specify an additional purpose.

(2) The administrator shall cease to hold office five working days after giving a notice under paragraph (c) of subsection (1), or on such later date as may be specified in the notice, but in any event no more than ten working days after the date on which the notice is given.

(3) Where the administrator gives notice under paragraph (d) of subsection (1), the resolution shall be deemed to be amended accordingly.

(4) Where a notice is given under subsection (1), the administrator shall within ten working days after giving the notice, deliver a copy of the notice to the Registrar.

(5) Where the administrator fails to comply with subsection (4) he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

420. (1) The remuneration to be paid to and expenses of the administrator and any indemnity to which he is entitled under section 421, shall be paid out of the property of the company, and shall have priority over any security which, as created, was a floating charge.

Remuneration
and expenses of
administrator.

(2) The court may on the application of the administrator or the company or any creditor of the company, review or fix the remuneration of the administrator in respect of any period at a level which is reasonable in the circumstances.

Liability of
administrator.

421. (1) Subject to the provisions of subsections (2) and (3), an administrator is personally liable—

- (a) on a contract entered into by the administrator in the exercise of any of the administrator's powers; and
- (b) for payment of wages or salary that during his administration, accrue under a contract of employment entered into before his appointment, if notice of the termination of the contract is not lawfully given within ten working days after the date of appointment.

(2) The court may, on the application of an administrator, extend the period within which notice of the termination of a contract is required to be given under paragraph (b) of subsection (1), on such terms and conditions as the court thinks fit, provided that application is made before the expiry of the period referred to in such paragraph.

(3) Subject to the provisions of subsection (6), an administrator is personally liable to the extent specified in subsection (4) for rent and any other payments becoming due under an agreement subsisting at the date of his appointment, relating to the use, possession, or occupation of property by the company.

(4) The liability of an administrator under subsection (3) is limited to that portion of the rent or other payments which is attributable to the period, commencing ten working days after the date of the appointment of the administrator and ending on—

- (a) the date on which the administration ends; or
- (b) the date on which the company ceases to use, possess, or occupy the property,

whichever is the earlier.

(5) The court may, on the application of an administrator—

- (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).

(6) Nothing in subsection (3) or subsection (4)—

- (a) shall be taken as giving rise to an adoption by an administrator of an agreement referred to in subsection (3); or
- (b) shall render an administrator liable to perform any other obligation under such an agreement.

(7) An administrator is entitled to an indemnity out of the property of the company in respect of his personal liability under this section.

422. (1) The court may relieve a person who has acted as an administrator from all or any personal liability incurred in the course of the administration, if it is satisfied that—

Relief from liability.

- (a) the liability was incurred solely by reason of a defect in the appointment of the administrator or in the order of the court under which the administrator was appointed; and
- (b) the administrator acted honestly and reasonably and ought in the circumstances to be exempted.

(2) The court may exercise its powers under subsection (1) subject to such terms and conditions as it thinks fit.

ASCERTAINMENT AND INVESTIGATION OF COMPANY'S AFFAIRS

Obligations of
company and
directors to
provide
information &c.

423. (1) Where an administrator is appointed, the company and every director of the company shall—

- (a) make available to the administrator all books, documents, and information relating to the business, affairs and property of the company in the company's possession or under its control;
- (b) if required to do so by the administrator, verify by affidavit that the books, documents, and information are complete and correct;
- (c) give the administrator such assistance as the administrator may reasonably require;
- (d) if the company has a common seal, make the common seal available for use by the administrator.

(2) Where the company or a director fails to comply with the requirements of subsection (1), the court may on the application of the administrator, make an order requiring the company or a director of the company to comply with the same.

MISCELLANEOUS

Creditors'
committee.

424. (1) Where a meeting of creditors has approved the administrator's proposals, the meeting may if it thinks fit, establish a committee (hereinafter referred to as the "creditors' committee"), to exercise the functions conferred on it under this Act.

(2) Where a creditors' committee is established, it may on giving not less than five working days notice, require the administrator to attend before it at any reasonable time and provide it with such information relating to the carrying out of his functions as it may reasonably require.

425. (1) During any time at which an administrator holds office, a creditor or shareholder of a company may apply to the court for an order under this section, on the ground that—

Protection of interests of creditors and share holders.

- (a) the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly discriminatory or unfairly prejudicial to the interests of the creditor or shareholder; or
- (b) any actual or proposed act or omission of the administrator is or would be unfairly discriminatory or unfairly prejudicial to the interests of such creditor or shareholder.

(2) On an application being made to court under this section, court may, where it considers it just and equitable to do so and subject to the provisions of subsection (3), make such order as it thinks fit including, without limiting the generality of this subsection, and order—

- (a) regulating the future management by the administrator of the company's affairs, business and property;
- (b) requiring the administrator to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained he has omitted to do;
- (c) requiring the calling of a meeting of creditors or shareholders for the purpose of considering such matters as the court may direct;
- (d) discharging the administrator and making such consequential provisions as the court thinks fit.

(3) An order under this section shall not prejudice or prevent—

- (a) the implementation of a compromise or arrangement approved under Part IX or Part X of this Act; or
- (b) where the application for the order was made more than twenty working days after the approval of any proposals or any revised proposals under section 407 or section 409, as the case may be, the implementation of those proposals or revised proposals.

Application to administrator of provisions relating to receivers.

426. (1) The provisions contained in sections 453, 454, 460, 468, 469 and 470 shall apply to an administrator and to a company under administration with all necessary modifications, and in particular as if—

- (a) the administrator were a receiver appointed by the court ;
- (b) references to the property in receivership were references to the property and undertaking of the company ; and
- (c) references to the grantor were references to the company.

PART XIV

FLOATING CHARGES

Company may grant floating charge.

427. (1) A company may grant a charge to which this Part of this Act applies (in this Act referred to as a “floating charge”) over the whole or any part of the property and undertaking of the company, for the purpose of securing a debt or any other obligation incurred or to be incurred by the company or any other person.