

LAWS OF BRUNEI

CHAPTER 247

INSOLVENCY

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CHAPTER 247
INSOLVENCY

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INSOLVENCY ACT

An act relating to laws in respect of insolvency and for matters connected therewith or incidental thereto

Commencement: 1st March 2016

[S 22/2016]

29th May 2017

[S 50/2017]

19th September 2018

[S 52/2018; S 54/2018]

PART 1

PRELIMINARY

Citation

1. (1) This Act may be cited as the Insolvency Act.
- (2) Different dates may be appointed for different provisions of this Act or for different purposes of the same provision.

Act binds Government

2. (1) Subject to subsection (2), this Act binds the Government so far as affecting or relating to the following matters —
 - (a) remedies against, or against the property of, the companies;
 - (b) priorities of debts;
 - (c) transactions at an undervalue or preferences;
 - (d) voluntary arrangements approved.
- (2) For the avoidance of doubt, this Act shall be read subject to Article 84C of the Constitution of Brunei Darussalam, and nothing in this Act shall be construed as conferring on any court any jurisdiction or power to entertain any proceedings referred to in Article 84C of the Constitution of Brunei Darussalam.

Interpretation

3. In this Act, unless the context otherwise requires —
 - “agent” does not include a person’s counsel acting as such;
 - “articles” has the meaning assigned to it in the Companies Act (Chapter 39);
 - “books and papers” include accounts, deeds, writing and documents;
 - “chattels leasing agreement” means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;
 - “company” means a company incorporated or registered under the Companies Act (Chapter 39);
 - “contributory” has the meaning assigned to it in section 61;
 - “corporation” has the meaning assigned to it in the Companies Act (Chapter 39);
 - “Court”, in relation to a company, means a court having jurisdiction to wind up the company;
 - “director” has the meaning assigned to it in the Companies Act (Chapter 39);
 - “document” includes summons, notice, order and other legal process, and registers;
 - “Executive Manager” means a person appointed as such under section 230(1);
 - “floating charge” means a charge which, as created, was a floating charge, and includes a floating charge within the Companies Act (Chapter 39);
 - “hire-purchase agreement” has the meaning assigned to it in the Hire-Purchase Order, 2006 (S 44/2006);
 - “insolvency”, in relation to a company, includes the approval of a voluntary arrangement or the appointment of a judicial manager;
 - “memorandum” has the meaning assigned to it in the Companies Act (Chapter 39);
 - “Minister” means the Minister of Finance and Economy;

“officer” has the meaning assigned to it in the Companies Act (Chapter 39);

“property”, in relation to a company, includes money, goods, things in action and every description of property, whether real or personal, and whether in Brunei Darussalam or elsewhere, and also obligations and every description of interest whether present or future or vested or contingent arising out of, or incidental to, property.

“Registrar” has the meaning assigned to it in the Companies Act (Chapter 39);

“resolution for voluntary winding up” means a resolution passed under section 66(1)(a) or (b);

“retention of title agreement” means an agreement for the sale of goods to a company, being an agreement —

(a) which does not constitute a charge on the goods; but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

“rules” means rules made under this Act;

“secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” is to be read accordingly;

“security” means any mortgage, charge, *lien* or other security interests;

“supervisor” means the supervisor of the voluntary arrangement referred to in section 17(2);

“voluntary arrangement” means the voluntary arrangement described in section 8.

Go into liquidation

4. For the purposes of this Act, a company goes into liquidation if —

(a) it passes a resolution for voluntary winding up; or

(b) an order for its winding up is made by the Court at a time when it has not already gone into liquidation by passing a resolution for voluntary winding up.

Connected with company

5. For the purposes of this Act, a person is connected with a company if—

- (a) he is a director of the company or an associate of such director; or
- (b) he is an associate of the company.

Associate

6. (1) For the purposes of this Act, any question whether a person is an associate of another person shall be determined in accordance with this section.

(2) A person is an associate of an individual if that person is the individual's spouse, or is a relative, or the spouse of a relative of the individual or his spouse.

(3) A person is an associate of an individual with whom he is in partnership, and of the spouse or a relative of any individual with whom he is in partnership.

(4) A person is an associate of an individual whom he employs or by whom he is employed and for this purpose, any director or other officer of a company shall be treated as employed by that company.

(5) A person in his capacity as trustee of a trust is an associate of an individual if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that individual or an associate of that individual.

(6) A company is an associate of an individual if that individual has control of it or if that individual and persons who are his associates together have control of it.

(7) For the purposes of this section, a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating —

(a) any relationship of the half blood as a relationship of the whole blood and the step-child or adopted child of any person as his child; and

(b) an illegitimate child as the legitimate child of his mother and reputed father.

(8) References in this section to a spouse shall include a former spouse.

(9) For the purposes of this section, an individual shall be taken to have control of a company if —

(a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or

(b) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it,

and where two or more persons together satisfy paragraph (a) or (b), they shall be taken to have control of the company.

(10) In this section, "company" includes any body corporate (whether incorporated in Brunei Darussalam or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

Member of company

7. For the purposes of this Act, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly.

PART 2

VOLUNTARY ARRANGEMENTS

*Proposal***Proposal for voluntary arrangement**

8. (1) A proposal to the company and to its creditors may be made, by any of the persons mentioned in subsection (2), for a voluntary arrangement.
- (2) The persons referred to in subsection (1) are —
- (a) the directors of a company (other than one which is in judicial management or being wound up);
 - (b) where the company is in judicial management, the judicial manager;
 - (c) where the company is being wound up, the liquidator.
- (3) A voluntary arrangement may include —
- (a) a composition in satisfaction of its debts;
 - (b) restructuring of debts through restatements of assets and liabilities and agreement with creditors on maintaining payments;
 - (c) reorganising the company by restructuring the ownership and management of the company to lead to better decision-making and execution; or
 - (d) any other acts as may be necessary for the rehabilitation or rescue of the company.
- (4) A proposal under subsection (1) shall provide for some person (the nominee) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

(5) Creditors who are entitled to vote on the proposal are those whose rights are affected by the proposal and the proposal shall —

(a) designate any class of claims or interests;

(b) specify any class of claims or interests that is not impaired under the proposal or the order;

(c) specify the treatment of any class of claims or interests that is impaired under the proposal or the order;

(d) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular class of claim or interest agrees to a less favourable treatment of such particular claim or interest.

Moratorium

9. (1) If the directors of a company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule 1 have effect with respect to —

(a) companies obtaining a moratorium under this section;

(b) the procedure for obtaining such a moratorium;

(c) the effects of such a moratorium; and

(d) the procedure applicable (in place of sections 11, 12 and 14) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

Procedure where nominee is not liquidator or judicial manager

10. (1) This section applies where the nominee under section 8(4) is not the liquidator or judicial manager of the company and the directors do not propose to take steps to obtain a moratorium under section 9 for the company.

(2) The nominee shall, within 28 days or such longer period as the Court may allow, after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating —

(a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented;

(b) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal; and

(c) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal under section 8 shall submit to the nominee —

(a) a document setting out the terms of the proposed voluntary arrangement; and

(b) a statement as to the affairs of the company containing —

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed; and

(ii) such other information as may be prescribed.

(4) The Court may —

(a) on an application made by the person intending to make the proposal under section 8, in a case where the nominee has failed to submit the report required by this section or has died; or

(b) on an application made by such person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

Summoning of meetings

11. (1) Where the nominee under section 8(4) is not the liquidator or judicial manager, and it has been reported to the Court that such meetings as are mentioned in section 10(2) should be summoned, the nominee making the report shall (unless the Court otherwise directs) summon those meetings for the date, time and place proposed in the report.

(2) Where the nominee is the liquidator or judicial manager, he shall summon meetings of the company and of its creditors to consider the proposal for such a date, time and place as he thinks fit.

(3) The persons to be summoned to a meeting of the company's creditors under this section are every creditor of the company of whose claim and address the nominee summoning the meeting is aware.

*Consideration and implementation of proposal***Decisions of meetings**

12. (1) The meetings summoned under section 11 shall decide whether to approve the proposed voluntary arrangement with or without modifications.

(2) The modifications —

(a) may include the conferment of the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement;

(b) shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 8.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject to subsection (5), a meeting so summoned shall not approve any proposal or modification under which —

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(5) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(6) Subject to subsections (4) and (5), each of the meetings shall be conducted in accordance with the rules.

(7) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

(8) References in this section to preferential debts and preferential creditors are to be read in accordance with section 147.

Approval of arrangement

13. (1) This section applies to a decision, under section 12, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules —

(a) it has been taken by both meetings summoned under section 11; or

(b) subject to any order made under subsection (5), it has been taken by the meeting of the company's creditors summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the Court.

(4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with —

(a) the day on which the decision was taken by the creditors' meeting; or

(b) where the decision of the company meeting was taken on a later day, that day.

(5) On an application under subsection (3), the Court may —

(a) order the decision of the company meeting to have effect instead of the decision of the meeting of the company's creditors; or

(b) make such other order as it thinks fit.

(6) Where a member of a regulated company, within the meaning given by paragraph 54 of Schedule 1 applies to the Court under subsection (3), the Brunei Darussalam Central Bank established by section 3(1) of Brunei Darussalam Central Bank Order, 2010 (S 103/2010) is entitled to be heard on the application.

[S 17/2021]

Effect of approval

14. (1) This section applies where a decision approving a voluntary arrangement has effect under section 13(2).

(2) The voluntary arrangement —

(a) takes effect as if made by the company at the meeting of the company's creditors; and

(b) binds every person who in accordance with the rules —

(i) was entitled to vote at that meeting (whether or not he was present or represented at it); or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If —

(a) when the arrangement ceases to have effect, any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid; and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Subject to subsection (5), if the company is being wound up or is in judicial management, the Court may do one or both of the following —

(a) by order stay all proceedings in the winding up or provide for the appointment of the judicial manager to cease to have effect;

(b) give such directions with respect to the conduct of the winding up or the judicial management as it thinks fit for facilitating the implementation of the voluntary arrangement.

(5) The Court shall not make an order under subsection (4)(a) —

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 12(7) has been made to the Court; or

(b) at any time when an application under section 15 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Challenge of decisions

15. (1) An application to the Court may be made, by any of the persons specified in subsection (2), on one or both of the following grounds —

(a) that a voluntary arrangement which has effect under section 13(2) unfairly prejudices the interests of a creditor, member or contributory of the company;

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under subsection (1) are —

(a) a person entitled, in accordance with the rules, to vote at either of the meetings;

(b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;

(c) the nominee or any person who has replaced him under section 10(4) or 12(2); and

(d) if the company is being wound up or is in judicial management, the liquidator or judicial manager.

(3) An application under this section shall not be made —

(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by section 12(7) has been made to the Court; or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that), an application made by a person within subsection (2)(b) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on such an application the Court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following —

(a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 14(2) or, in a case falling within subsection (1)(b), any decision taken by the meeting in question which has effect under that section;

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in the case falling within subsection (1)(b), a further company or, as the case may be, a creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal, the Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under section 14(2).

(6) In a case where the Court, on an application under this section with respect to any meeting —

(a) gives a direction under subsection (4)(b); or

(b) revokes or suspends an approval under subsection (4)(a) or (5),

the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

(7) Except in pursuance of sections 12, 13 and 14, a decision taken at a meeting summoned under section 11 is not invalidated by any irregularity at or in relation to the meeting.

False representations etc.

16. (1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company —

(a) makes any false representation; or

(b) fraudulently does, or omits to do, anything,

he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Subsection (1) applies even if the proposal is not approved.

Implementation of proposal

17. (1) This section applies where a voluntary arrangement has effect under section 14(2).

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred —

(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 11;

(b) by virtue of section 10(4) or 12(2) on a person other than the nominee,

is to be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court; and on the application, the Court may —

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

(b) give him directions;

(c) require a dissenting creditor to receive as much under the voluntary arrangement as he would receive on a winding up; or

(d) make such other order as it thinks fit.

(4) The supervisor —

(a) may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement; and

(b) is included among the persons who may apply to the Court for the winding up of the company or for a judicial management order to be made in relation to it.

(5) The Court may, whenever —

(a) it is expedient to appoint a person to carry out the functions of the supervisor; or

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person, who is qualified to act as an insolvency practitioner or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Prosecution of delinquent officers of company

18. (1) This section applies where a moratorium under section 9 has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 14(2) or paragraph 46 of Schedule 1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith —

(a) report the matter to the Minister; and

(b) provide the Minister with such information and give the Minister such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the Minister requires.

(3) Where a report is made to the Minister under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under the Companies Act (Chapter 39) to investigate the affairs of the company.

(4) For the purposes of such an investigation, any obligation imposed on a person by any provision of the Companies Act (Chapter 39) to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Minister in his investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.

(6) In criminal proceedings in which that person is charged with an offence to which this subsection applies —

(a) no evidence relating to the answer may be adduced; and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Where the Public Prosecutor institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the Public Prosecutor all assistance in connection with the prosecution which he is reasonably able to give.

(8) The Court may, on the application of the Public Prosecutor, direct any person referred to in subsection (7) to comply with that subsection if he has failed to do so.

(9) For the purposes of subsection (7), “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

Arrangements coming to end prematurely

19. For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 13(2) comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 14(2)(b)(i) or paragraph 47(2)(b)(i) of Schedule 1, as the case may be.

PART 3

RECEIVERS AND MANAGERS

Disqualification, appointment and remuneration

Disqualification for appointment as receiver

20. (1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a company —

(a) a corporation;

(b) an undischarged bankrupt;

(c) a mortgagee of any property of the company, or an auditor of the company or a director, secretary or employee of the company

or of any corporation which is a mortgagee of the property of the company; and

(d) any person who is neither an approved liquidator nor the Official Receiver.

(2) Nothing in subsection (1)(a) or (d) shall apply to any corporation authorised by any written law to act as receiver of the property of a company.

Notification of appointment of receiver or manager

21. (1) If any person —

(a) obtains an order for the appointment of a receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation; or

(b) appoints such a receiver or manager under any power contained in any instrument,

he shall, within 7 days after he has obtained the order or made the appointment, lodge notice of the fact with the Registrar.

(2) Where any person appointed as receiver or manager of the property of a company or such other corporation under the powers contained in any instrument ceases to act as such, he shall, within 7 days thereafter, lodge with the Registrar notice to that effect.

(3) A person who fails to comply with the requirements of this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Appointment of liquidator as receiver

22. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the liquidator may be so appointed.

Statement that receiver or manager appointed

23. (1) Where a receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation has been

appointed, every invoice, order for goods or business letter issued by or on behalf of the company or such other corporation the receiver or manager or the liquidator of the company or such other corporation, being a document on or in which the name of the company or such other corporation appears, shall contain a statement immediately following the name of the company or such other corporation that a receiver or manager has been appointed.

(2) A company or such other corporation and any officer or liquidator of the company or such other corporation and any receiver or manager company or such other corporation who knowingly and wilfully authorises or permits the non-compliance of this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Provisions as to information where receiver or manager appointed

24. (1) Where a receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation is appointed —

(a) the receiver or manager shall immediately send notice to the company or such other corporation of his appointment;

(b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver or manager in accordance with section 25, a statement in the prescribed form as to the affairs of the company or such other corporation; and

(c) the receiver or manager shall within one month after receipt of the statement —

- (i) lodge with the Registrar, a copy of the statement and of any comment he sees fit to make thereon;
- (ii) send to the company, a copy of any such comment as referred to in sub-paragraph (i), or if he does not see fit to make any comment, a notice to that effect; and
- (iii) where the receiver or manager is appointed by or on behalf of the debenture holders of the company or such other corporation, send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act; except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver or manager shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up, this section and section 25 apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modification arising from that fact.

(4) A person who fails to comply with any of the requirements of this section is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Special provisions as to statement submitted to receiver or manager

25. (1) The statement as to the affairs of a company required by section 24(1)(b) to be submitted to the receiver or manager of the property of the company or of the property in Brunei Darussalam of any other corporation shall show as at the date of the receiver's or manager's appointment —

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names, addresses and occupations of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(2) The statement as to the affairs of the company or such other corporation shall be submitted by, and be verified by, affidavit of —

- (a) one or more of the persons who are, at the date of the receiver's or manager's appointment, the directors of the company or

such other corporation and the person who is at that date the secretary or other chief officer of the company or such other corporation; or

(b) such of the persons mentioned in subsection (3) as the receiver or manager may require to submit and verify the statement.

(3) The persons referred to in subsection (2)(b) are —

(a) those who are or have at any time been officers of the company or such other corporation;

(b) those who have taken part in the formation of the company or such other corporation at any time within one year before the date of the receiver's or manager's appointment;

(c) those who are in the employment of the company or such other corporation, or have been in the employment of the company or such other corporation within that year, and are in the opinion of the receiver or manager capable of giving the information which he requires;

(d) those who are or have been, within that year, officers of, or in the employment of, a company which is or within that year was, an officer of the company or such other corporation to which the statement relates.

(4) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver or manager (or his successor), out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver or manager (or his successor) may consider reasonable, subject to an appeal to the Court.

(5) A person who fails to comply with the requirements of this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(6) References in this section to the receiver's or manager's successor shall include a continuing receiver or manager.

Power of Court to fix remuneration of receivers or managers

26. (1) The Court may, on application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company or of the property in Brunei Darussalam of any other corporation.

(2) The power of the Court shall, where no previous order has been made with respect thereto —

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

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application for the order; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by subsection (2)(c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may, on an application made by the liquidator or by the receiver or manager, amend an order made under this section.

*Duties and liabilities***Lodging of accounts of receivers and managers**

27. (1) Every receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation shall —

(a) within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within one month after he ceases to act as

receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —

- (i) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
- (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
- (iii) where he has been appointed pursuant to the powers contained in any instrument —
 - (A) the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing; and
 - (B) his estimate of the total value of all assets of the company or such other corporation which are subject to that instrument; and

(b) before lodging such account, verify by affidavit all accounts and statements referred to therein.

(2) (a) The Registrar may, of his own motion or on the application of the company or such other corporation or a creditor, cause the accounts to be audited by a public accountant appointed by the Registrar.

(b) For the purposes of the audit, the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the accounts to be audited on the request of the company or such other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the receiver or manager unless the Registrar otherwise determines.

(5) Every receiver or manager who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Application for directions

28. (1) A receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(2) Where a receiver or manager has been appointed to enforce any charge for the benefit of debenture holders of the company, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

Liability of receiver or manager

29. (1) Any receiver or manager taking possession of any property of a company or of the property in Brunei Darussalam of any other corporation for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or such other corporation or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge as a mortgagee in possession.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge

30. (1) Where a receiver or manager is appointed on behalf of the debenture holders of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the company is not at the time in the course of being wound up —

(a) debts which in every winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or *ex gratia* payment, vacation leave or superannuation or provident fund payments; and

(b) any amount which in a winding up is payable in pursuance of section 147(6) or (8),

shall be paid out of any assets coming to the hands of the receiver or manager, in priority to any claim for principal or interest in respect of the debentures.

(2) For the purposes of subsection (1), the references in section 147(1)(d), (e), (f) and (g) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or manager or of possession being taken as aforesaid, as the case requires.

(3) Any payment made under this section shall be recovered as far as may be out of the assets of the company available for payment of general creditors.

Enforcement of duty of receiver or manager to make returns

31. (1) If any receiver or manager of the property of a company or of the property in Brunei Darussalam of any other corporation who has made default in making or lodging any return, account or other document or in giving any notice required by law, fails to make good the default within 14 days after the service on him by any member or creditor of the company or such other corporation or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for that purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a company or such other corporation has misappropriated or retained or become liable or accountable for any money or property of the company or such other corporation or been guilty of any misfeasance or breach of trust or duty in relation to the company or such other corporation, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to —

(a) repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just; or

(b) contribute such sum to the assets of the company or such other corporation by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

PART 4

JUDICIAL MANAGEMENT

Application to Court for company to be placed under judicial management and for appointment of judicial manager

32. (1) Where a company or where a creditor or creditors of the company consider that —

(a) the company is or will be unable to pay its debts; and

(b) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up,

an application may be made to the Court for an order that the company be placed under the judicial management of a judicial manager.

(2) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor or creditors (including any contingent or prospective creditor or creditors or all or any of those parties, together or separately), makes an application for a judicial management order under subsection (1), the Court may make a judicial management order in relation to the company if, and only if —

(a) it is satisfied that the company is or will be unable to pay its debts; and

(b) it considers that the making of the order would be likely to achieve one or more of the following purposes —

(i) the survival of the company, or the whole or part of its undertaking as a going concern;

(ii) the approval under section 13 of a voluntary arrangement between the company and any such creditors or members as are mentioned in that section or the Brunei Darussalam Central Bank;

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(iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

(3) Any judicial management order made under subsection (2) shall direct that during the period in which the order is in force, the affairs, business and property of the company shall be managed by a judicial manager appointed for the purpose by the Court; and such an order shall specify the purpose or purposes for whose achievement the order is made.

(4) (a) In an application for a judicial management order under subsection (1), the applicant shall nominate a person who is a public accountant, who is not the auditor of the company, to act as a judicial manager.

(b) The Court may reject the nomination of the applicant and appoint another person in his stead.

(c) Where a nomination is made by the company, a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination and the Court may, if satisfied as to the value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate a person in his stead and, if it sees fit, adopt their nomination.

(d) Nothing in this subsection shall prevent the Minister from himself nominating a person to act as a judicial manager if he considers that the public interest so requires and in such a case the Minister may be heard in support of his nomination and for this purpose may be represented.

(e) Notwithstanding paragraph (a), where a person is appointed by the Court or nominated by the Minister to act as a judicial manager that person need not be a public accountant.

(5) When an application for a judicial management order is made under subsection (1), notice of the application —

(a) shall be published in the *Gazette* and in a Malay and English local daily newspaper, and a copy thereof sent to the Registrar; and

(b) shall be given —

(i) to the company, in a case where a creditor is the applicant; and

(ii) to any person who has appointed or is or may be entitled to appoint a receiver and manager of the whole (or substantially the whole) of the property of a company under the terms of any debenture of a company secured by a floating charge or by a floating charge and one or more fixed charges.

(6) Subject to subsection (11), the Court shall dismiss an application for a judicial management order if it is satisfied that —

(a) a receiver and manager referred to in subsection (5) has been or will be appointed; or

(b) the making of the order is opposed by a person who has appointed or is entitled to appoint such a receiver and manager.

(7) On hearing the application for a judicial management order, the Court may —

(a) dismiss the application or adjourn the hearing conditionally; or

(b) unconditionally or make an interim order or any other order that it thinks fit.

(8) A judicial management order shall not be made in relation to a company —

(a) after the company has gone into liquidation;

(b) where the company is a bank licensed under the Banking Order, 2006 (S 45/2006), Islamic Banking Order, 2008

(S 96/2008), International Banking Order, 2000 (S 53/2000) or is a finance company licensed under the Finance Companies Act (Chapter 89); or

(c) where the company is an insurance company registered under the Insurance Order, 2006 (S 48/2006) or a takaful company registered under the Takaful Order, 2008 (S 100/2008).

(9) A judicial management order shall, unless it is otherwise discharged, remain in force for a period of 180 days from the date of the making of the order but the Court may, on application of a judicial manager, increase this period subject to such conditions as the Court may impose.

(10) The costs and expenses of any unsuccessful application for a judicial management order made under this section shall, unless the Court otherwise orders, be borne by the applicant and, if the Court considers that the application is frivolous or vexatious, it may make such orders, as it thinks just and equitable, to redress any injustice that may have resulted.

(11) Nothing in this section shall preclude a Court from —

(a) making a judicial management order and appointing a judicial manager if it considers the public interest so requires; or

(b) appointing, after the making of an application for a judicial management order and on the application of the person applying for the judicial management order, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may, if the Court sees fit, be the person nominated in the application for a judicial management order. The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.

(12) Any person who has acted as Executive Manager of the company in respect of which a judicial management order is sought may be appointed judicial manager of that company by the Court.

(13) For the purposes of this section, “unable to pay debts” has the meaning assigned to it in section 100.

Power of Minister to present judicial management petition

33. (1) The Minister may, if he considers it expedient in the public interest, present a petition for a judicial management order in relation to any company.

(2) The Court may make a judicial management order on the petition of the Minister and appoint a judicial manager if the Court is satisfied that it is expedient in the public interest to do so, and the Court may, if it thinks fit, forthwith make a judicial management order or make such other order as it thinks fit.

(3) The purposes for which a judicial management order may be made on the petition of the Minister are —

(a) such purpose or purposes for the promotion of the public interest as the Minister may specify in his petition;

(b) all or any one or more of the purposes specified in section 32,

and the order shall specify the purpose or purposes for which it is made.

Effect of application for judicial management order

34. During the period beginning with the making of an application for a judicial management order and ending with the making of such an order or the dismissal of the application —

(a) no resolution shall be passed or order made for the winding up of the company;

(b) no steps shall be taken to enforce any charge on or security over the company's property or to repossess any goods in the company's possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with leave of the Court and subject to such conditions as the Court may impose; and

(c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with leave of the Court and subject to such conditions as the Court may impose.

Effect of judicial management order

35. (1) On the making of a judicial management order —
- (a) any receiver or receiver and manager shall vacate office; and
 - (b) any application for the winding up of the company shall be dismissed.
- (2) Where any receiver or receiver and manager has vacated office under subsection (1)(a) —
- (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and, subject to subsection (4), paid out of any property of the company which was in his custody or under his control at the time in priority to any security held by the person by or on whose behalf he was appointed.
- (3) Neither a receiver nor a receiver and manager of a company who vacates office under subsection (1)(a) shall be required on or after so vacating office to take steps to comply with any duty imposed on him by section 30.
- (4) During the period for which a judicial management order is in force —
- (a) no resolution shall be passed or order made for the winding up of the company;
 - (b) no receiver and manager as described in section 32(5)(b)(ii) of the company shall be appointed;

(c) no steps shall be taken to enforce any charge on or security over the property of the company or to repossess any goods in the company's possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement except —

- (i) with the consent of the judicial manager; or
- (ii) with leave of the Court and subject to such conditions as the Court may impose;

(d) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except —

- (i) with the consent of the judicial manager; or
- (ii) with leave of the Court and subject to such conditions as the Court may impose.

Notification of judicial management order

36. (1) Every invoice, order for goods or business letter which, at a time when a judicial management order is in force in relation to a company, is issued by or on behalf of the company or the judicial manager, being a document on or in which the company's name appears, shall contain a statement that the affairs, business and property of the company are being managed by the judicial manager.

(2) A company which, or a judicial manager or an officer of the company who, knowingly and wilfully authorises or permits the non-compliance of this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Vacancy in appointment of judicial manager

37. If a vacancy occurs by death, resignation or otherwise in the office of a judicial manager of a company, the Court may, on the application of the company or any creditor or creditors of the company or the Minister, by order, fill the vacancy.

Powers and duties of judicial manager

38. (1) On the making of a judicial management order, the judicial manager shall take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) During the period for which a judicial management order is in force, all powers conferred and duties imposed on the directors by this Act or the Companies Act (Chapter 39) or by the memorandum or articles of the company shall be exercised and performed by the judicial manager and not by the directors; but nothing in this subsection shall require the judicial manager to call any meeting of the company.

(3) The judicial manager of a company shall have powers to —

(a) do all such things as may be necessary for the management of the affairs, business and property of the company;

(b) do all such other things as the Court may by order sanction.

(4) Without prejudice to the generality of subsection (3)(a), the powers conferred by that subsection shall include the powers specified in Schedule 2.

(5) The judicial manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(6) Nothing in this section shall be taken as authorising the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the making of the judicial management order unless —

(a) the making of the payment is sanctioned by the Court or the payment is made in pursuance of a compromise or arrangement so sanctioned; or

(b) the payment is made towards discharging sums secured by a security or payable under a hire-purchase agreement, chattels leasing agreement or retention of title agreement to which section 39(2), (5) and (6) applies.

(7) The judicial manager of a company —

(a) may, if he thinks fit, at any time summon a meeting of the company's creditors; and

(b) shall summon such a meeting if he is directed to do so by the Court.

(8) Any alteration in the memorandum or articles of the company made by virtue of an order under subsection (3)(b) is of the same effect as if duly made by resolution of the company, and the provisions of the Companies Act (Chapter 39) apply to the memorandum or articles as so altered accordingly.

(9) An office copy of an order under subsection (3)(b) sanctioning the alteration of the memorandum or articles of the company shall, within 14 days from the making of the order, be sent by the judicial manager to the Registrar.

(10) A person dealing with the judicial manager of a company in good faith and for value shall not be concerned to inquire whether the judicial manager is acting within his powers.

Power to deal with charged property etc.

39. (1) The judicial manager 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) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal (with or without other assets) —

(a) of any property of the company subject to a security to which this subsection applies; or

(b) of any goods under a hire-purchase agreement, chattels leasing agreement or retention of title agreement,

would be likely to promote one or more of the purposes specified in the judicial management order, the Court may by order authorise the judicial manager to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase

agreement, chattels leasing agreement or retention of title agreement were vested in the company.

(3) Subsection (1) applies to any security which, as created, was a floating charge and subsection (2) applies to any other security.

(4) Where any property is disposed of under subsection (1), the holder of the security shall have 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 under subsection (2) that the net proceeds of the disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement, chattels leasing agreement or retention of title agreement and where the net proceeds of the disposal are less than the sums secured by the security or payable under any of those agreements, the holder of the security or the owner of the goods, as the case may be, may prove on a winding up for any balance due to him.

(6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition shall require the net proceeds of the disposal to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) (a) A copy of an order made under subsection (2) shall, within 14 days after the making of the order, be sent by the judicial manager to the Registrar.

(b) The judicial manager shall give 7 days' notice of his application to the Court to dispose of property subject to a security under subsection (2) to the holder of the security or to the owner of the goods which are subject to the hire-purchase agreement, chattels leasing agreement or retention of title agreement and the holder or the owner, as the case may be, may oppose the disposal of the property.

(8) A judicial manager who, without reasonable excuse, fails to comply with subsection (7), is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, and, in the case of a continuing offence, with a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

(9) Nothing in this section shall be regarded as prejudicing an application to the Court under section 49.

Agency and liability for contracts

40. (1) The judicial manager of a company shall —

(a) be deemed to be the agent of the company;

(b) be personally liable on any contract, including any contract of employment, entered into or adopted by him in the carrying out of his functions (except in so far as the contract or a notice under subsection (2) otherwise provides); and

(c) be entitled to be indemnified in respect of that liability, and to have his remuneration and expenses defrayed, out of the property of the company which is in his custody or under his control in priority to all other debts, except those subject to a security to which section 39(2) applies.

(2) Where a contract entered into by the company is adopted by the judicial manager, he may, by notice given to the other party, disclaim any personal liability under that contract.

(3) For the purposes of this section, the judicial manager is not to be taken to have adopted a contract entered into by the company by reason of anything done or omitted to be done within 28 days after the making of the judicial management order.

(4) Nothing in this section shall —

(a) limit the right of a judicial manager to seek an indemnity from any other person in respect of contracts entered into by him that are approved by the Court; or

(b) make the judicial manager personally liable for payment of rent under leases held by the company at the time of his appointment.

Vacation of office and release

41. (1) The judicial manager of a company may at any time be removed from office by order of the Court and may, with leave of the Court and subject to such conditions as the Court may impose, resign his office by giving notice of his resignation to the Court.

- (2) The judicial manager of a company shall vacate office if—
- (a) being a public accountant at the time of his appointment, he ceases to be a public accountant; or
 - (b) the judicial management order is discharged.
- (3) Where at any time a person ceases to be a judicial manager of a company whether by virtue of this section or by reason of his death—
- (a) any sum payable in respect of any debt or liability incurred while he was a judicial manager under contracts entered into by him in the carrying out of his functions; and
 - (b) any remuneration and expenses properly incurred by him,
- shall be charged on and paid out of the property of the company which is in his custody or under his control in priority to all other debts.
- (4) Where a person ceases to be a judicial manager of a company, he shall, from such time as the Court may determine, be released from any liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as a judicial manager but nothing in this section shall relieve him of any of the liabilities referred to in section 48(4).

Information to be given by and to judicial manager

- 42.** (1) Where a judicial management order has been made, the judicial manager shall—
- (a) immediately send to the Registrar a copy of the order;
 - (b) immediately send to the company and publish a notice of the order in the *Gazette* and in a Malay and English local daily newspaper; and
 - (c) within 28 days after the making of the order, unless the Court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of the addresses),

and the Registrar shall enter the copy of the order in his records of the company.

(2) A statement as to the affairs of the company shall be made out and submitted to the judicial manager in accordance with section 43 within 21 days after receipt by the company of the notice of the judicial management order. Any longer period allowed by the judicial manager shall not exceed 2 months.

(3) A person who, without reasonable excuse, fails to comply with this section, is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, and, in the case of a continuing offence, with a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

Statement of affairs

43. (1) The statement as to the affairs of the company required by section 42 to be submitted to the judicial manager shall show as at the date of the judicial management order —

(a) the particulars of the company's assets, debts and liabilities;

(b) the names, addresses and occupations of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by, affidavit of —

(a) one or more of the persons who are, at the date of the judicial management order, the directors of the company and the person who is at that date the secretary or other chief officer of the company; or

(b) such of the persons mentioned in subsection (3) as the judicial manager may require to submit and verify the statement.

(3) The persons referred to in subsection (2)(b) are —

(a) those who are or have at any time been officers of the company;

(b) those who have taken part in the formation of the company at any time within one year before the date of the judicial management order;

(c) those who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the judicial manager capable of giving the information which he requires,

and in this subsection, “employment” includes employment under a contract for services.

(4) A person who, without reasonable excuse, fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

(5) The statement may be used in evidence against any person making or concurring in making it.

(6) A copy of the statement shall immediately be sent by the judicial manager to the Registrar.

(7) Any person making the statement and affidavit shall be allowed and shall be paid by the judicial manager, out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the judicial manager may consider reasonable, subject to an appeal to the Court.

Statement of proposals

44. (1) Where a judicial management order has been made, the judicial manager shall, within 60 days (or such longer period as the Court may allow) after the making of the order —

(a) send to the Registrar and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving

one or more of the purposes mentioned in section 32(2)(b) for whose achievement the order was made; and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for that purpose in not less than 14 days' notice.

(2) The judicial manager shall also, within 60 days (or such longer period as the Court may allow) after the making of the order —

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish a notice in a Malay and English local daily newspaper stating an address to which members of the company should request in writing for copies of the statement to be sent to them free of charge.

Consideration of proposals by meeting of company's creditors

45. (1) A meeting of the company's creditors, summoned under section 44, shall decide whether to approve the judicial manager's proposals.

(2) At such meeting, the majority in number and value of creditors, present and voting in person or by proxy, whose claims have been accepted by the judicial manager, may approve the proposals with modifications but shall not do so unless the judicial manager consents to each modification.

(3) The judicial manager shall report the result of the meeting (which shall, subject to subsection (2), be conducted in accordance with the rules) to the Court and shall give notice of that result to the Registrar and to such other persons or bodies as the Court may approve.

(4) If a report is given to the Court under subsection (3) that the meeting has declined to approve the judicial manager's proposals (with or without modifications), the Court may —

(a) by order —

(i) discharge the judicial management order and make such consequential provision as it thinks fit;

(ii) adjourn the hearing conditionally or unconditionally; or

(b) make an interim order or any other order that it thinks fit.

A copy of any order of Court made under this subsection shall be published in a Malay and English local daily newspaper.

(5) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

(6) A judicial manager who, without reasonable excuse, fails to comply with subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, and, in the case of a continuing offence, with a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

Committee of creditors

46. (1) Where a meeting of the company's creditors summoned under section 44 has approved the judicial manager's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee of creditors to exercise the functions conferred on it under subsection (2).

(2) The committee of creditors may require the judicial manager to attend before it and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Duty to manage affairs etc. in accordance with approved proposals

47. (1) Where the judicial manager's proposals have been approved by a meeting of the company's creditors summoned under section 44, then, subject to any order under section 49, it shall be the duty of the judicial manager to manage the affairs, business and property of the company in accordance with the proposals as from time to time revised by him.

(2) Where the judicial manager proposes to make substantial revisions of his proposals as so approved, he shall —

(a) send to all creditors of the company (so far as he is aware of their addresses) a statement of his proposed revisions; and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose in not less than 14 days' notice,

and shall not make the proposed revisions unless at such meeting, they are approved by the majority in number and value of creditors, present and voting in person or by proxy, whose claims have been accepted by the judicial manager.

(3) The judicial manager shall also —

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish a notice in a Malay and English local daily newspaper stating an address to which members of the company should request in writing for copies of the statement to be sent to them free of charge.

(4) A meeting of the company's creditors summoned under subsection (2) (which shall, subject to subsection (2) and this subsection, be conducted in accordance with the rules) may approve the proposed revisions with modifications but shall not do so unless the judicial manager consents to each modification.

(5) After the conclusion of a meeting summoned under subsection (2), the judicial manager shall give notice of the result of the meeting to the Registrar or to such other persons or bodies as the Court may approve.

Duty to apply for discharge of judicial management order

48. (1) The judicial manager of a company shall apply to the Court for the judicial management order to be discharged if it appears to him that the purpose or each of the purposes specified in the order has been achieved or is incapable of achievement.

(2) On the hearing of an application under this section, the Court may —

(a) by order —

(i) discharge the judicial management order and make such consequential provision as it thinks fit; or

(ii) adjourn the hearing conditionally or unconditionally; or

(b) make an interim order or any other order that it thinks fit.

(3) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

(4) (a) Subject to paragraph (b), where a judicial management order has been discharged under this Part or where a person ceases to be a judicial manager pursuant to section 41, the judicial manager may apply to the Court for his release and the Court may, if it thinks fit, make an order releasing him from liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as judicial manager.

(b) Any such release shall not relieve him from liability for any misapplication or retention of money or property of the company or for which he has become accountable or from any law to which he would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

Protection of interests of creditors and members

49. (1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court for an order under this section on the ground that —

(a) the affairs, business and property of the company are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself) or of a single creditor that represents one-quarter, in value, of the claims against the company; or

(b) any actual or proposed act or omission of the judicial manager is or would be so prejudicial.

(2) On an application for an order under this section, the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(3) A dissenting creditor shall receive as much under the judicial management as he would receive on a winding up.

- (4) Subject to subsection (5), an order under this section may —
- (a) regulate the future management by the judicial manager of the affairs, business and property of the company;
 - (b) require the judicial manager 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) require the summoning of a meeting of the company's creditors or members for the purpose of considering such matters as the Court may direct;
 - (d) discharge the judicial management order and make such consequential provision as it thinks fit;
 - (e) require a dissenting creditor to receive as much under the judicial management as he would receive on a winding up.

(5) An order under this section shall not prejudice or prevent the implementation of any voluntary arrangement approved under section 12.

(6) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

(7) A judicial manager who, without reasonable excuse, fails to comply with subsection (6) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, and, in the case of a continuing offence, with a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

Trade union representation on behalf of members who are creditors and employees of company

50. (1) Where employees of a company are creditors, by reason that wages or salary are payable to them whether by way of allowance or reimbursement under contracts of employment or any award or agreement regulating conditions of employment or otherwise, and where the employees are members of a trade union that is recognised under the Trade Unions Act (Chapter 128), it shall be sufficient compliance by the judicial manager with sections 42, 44 and 45 if the notice, statement of proposals or revised

proposals referred to therein are sent to the trade union representing the employees.

(2) A trade union to which subsection (1) applies shall be entitled to represent any such employees at a meeting of the company's creditors summoned under section 44 or, with leave of the Court, to apply to the Court under section 49 on their behalf or may make representations to the judicial manager on behalf of those employees in respect of —

(a) any matter connected with or arising from the continuation or termination of their contracts of employment under section 40; or

(b) any matter relating to any arbitration award or any collective agreement certified under the Trade Unions Act (Chapter 128) that affects those employees.

Undue preference in case of judicial management

51. (1) Subject to this Act and such modifications as may be prescribed, a settlement, a conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company which if it had been made or incurred by an individual would in the event of his becoming a bankrupt be void as against the Official Receiver under the Bankruptcy Act (Chapter 67) shall, in the event of the company being placed under judicial management, be void as against the judicial manager.

(2) For the purposes of subsection (1), the date that corresponds with the date of the application for a bankruptcy order in the case of an individual and the date on which a person is adjudged bankrupt, is the date on which an application for a judicial management order is made.

Delivery and seizure of property

52. (1) Where any of the persons mentioned in subsection (2) has in his possession or control any property, books, papers or records to which the company appears to be entitled, the Court may require that person immediately (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the judicial manager.

(2) The persons referred to in subsection (1) are —

(a) a contributory or member of the company; and

(b) any person who has previously held office as receiver or receiver and manager of the property of the company.

(3) Where —

(a) the judicial manager seizes or disposes of any property which is not the property of the company; and

(b) at the time of seizure or disposal, the judicial manager believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the judicial manager shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the judicial manager and the judicial manager shall have a *lien* on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Duty to co-operate with judicial manager

53. (1) Each of the persons mentioned in subsection (2) shall —

(a) give to the judicial manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the judicial manager may at any time after the date of the judicial management order reasonably require; and

(b) attend on the judicial manager at such times as the judicial manager may reasonably require.

(2) The persons referred to in subsection (1) are —

(a) those who are or have at any time been officers of the company;

(b) those who have taken part in the formation of the company at any time within one year before the date of the judicial management order; and

(c) those who are in the employment of the company, or have been in the employment of the company within that year, and are in

the opinion of the judicial manager, capable of giving the information which he requires.

(3) A person who, without reasonable excuse, fails to comply with any obligation imposed by this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Inquiry into company's dealings etc.

54. (1) The Court may, on the application of the judicial manager, summon to appear before it —

(a) any officer of the company;

(b) any person known or suspected to have in his possession any property of the company or is supposed to be indebted to the company; or

(c) any person whom the Court thinks is capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company,

and the Court may require any such person to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or records in his possession or under his control relating to the company or the matters mentioned in paragraph (c).

(2) Subsections (3) and (4) apply in a case where —

(a) a person, without reasonable excuse, fails to appear before the Court when he is summoned to do so under this section; or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this section.

(3) The Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a police officer for —

(a) the arrest of that person; and

(b) the seizure of any books, papers, records, money or goods in that person's possession.

(4) The Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

(5) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in subsection (1)(c).

(6) If it appears to the Court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the Court may, on the application of the judicial manager, order that person to deliver the whole or any part of the property to the judicial manager at such time, in such manner and on such conditions as the Court thinks fit.

(7) If it appears to the Court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the Court may, on the application of the judicial manager, after examining that person on the matter, order that person to pay to the judicial manager, at such time, in such manner and on such conditions as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

(8) The Court may, if it thinks fit, order that any person, who if within Brunei Darussalam would be summoned to appear before it under this section, to be examined in a place outside Brunei Darussalam.

Application of section 151 of Chapter 39 to company under judicial management

55. At any time when a judicial management order is in force in relation to a company under judicial management, section 151 of the Companies Act (Chapter 39) applies as if for subsections (1) and (3) thereof there were substituted the following —

“(1) Where a voluntary arrangement is proposed between a company and its creditors, the Court may on the application of the judicial manager, order a meeting of creditors to be summoned in such manner as the Court may direct.

(3) If three-fourths, in value, of the creditors present and voting in person or by proxy at the meeting agree to a voluntary arrangement, the arrangement shall, if approved by the Court, be binding on all the creditors and on the judicial manager.”.

PART 5

WINDING UP OF COMPANIES REGISTERED UNDER COMPANIES ACT (CHAPTER 39)

Chapter I

Introduction

Application

56. (1) This Part applies to the winding up of a company registered under the Companies Act (Chapter 39).

(2) The winding up may be —

- (a) voluntary; or
- (b) by the Court.

Contributories

Liability as contributories of present and past members

57. (1) When a company is wound up, every present and past member is liable to contribute its assets to any amount sufficient for —

- (a) the payment of its debts and liabilities;
- (b) the expenses of the winding up; and
- (c) the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows —

(a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;

(b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member is not liable to contribute, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them;

(d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;

(e) nothing in the Companies Act (Chapter 39) or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

Liability of past directors and shareholders

58. (1) This section applies where a company is being wound up and the aggregate amount of the company's assets and the amounts paid by way of

contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) A person who has contributed any amount to the assets in pursuance of this section may apply to the Court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the Court thinks just and equitable.

(3) Section 57 does not apply in relation to liability accruing by virtue of this section.

Limited company formerly unlimited

59. (1) This section applies in the case of a company being wound up which was formerly registered as unlimited but has re-registered as a limited company.

(2) Notwithstanding section 57(2)(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of 3 years beginning with the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If none of the persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute under subsection (2), notwithstanding that the existing members have satisfied the contributions required to be made by them.

(4) Subsection (3) applies subject to subsection (2) and section 57(2)(a), but notwithstanding section 57(2)(c).

(5) Notwithstanding subsections (3) and (4) and section 57(2)(d), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute under subsection (2).

Unlimited company formerly limited

60. (1) This section applies in the case of a company being wound up which was formerly registered as limited but has been re-registered as an unlimited company.

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

Meaning of “contributory”

61. (1) In this Act, “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The reference in subsection (1) to person liable to contribute to the assets does not include a person so liable by virtue of a declaration by the Court under section 185 or 186.

(3) A reference in the article of a company to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 58.

Nature of contributory’s liability

62. The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member

63. (1) If a contributory dies before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of judicial management to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the Court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

Effect of contributory's bankruptcy

64. (1) This section applies if a contributory becomes bankrupt, before or after he has been placed on the list of contributories.

(2) If a contributory becomes bankrupt, his trustee in bankruptcy shall represent him for all purposes of the winding up, and is a contributory accordingly.

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

Companies registered but not incorporated under Chapter 39

65. (1) The following applies in the event of a company being wound up which is registered but not incorporated under the Companies Act (Chapter 39).

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable —

(a) to pay, or contribute to the payment of, any debt or liability so contracted;

(b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or

(c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to the debts or liabilities mentioned in this subsection.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability.

(4) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Act, with respect to the personal

representatives and to the trustees of bankrupt or insolvent contributories respectively, apply.

Chapter II

Resolutions for, and commencement of, voluntary winding up

Circumstances in which company may be wound up voluntarily

66. (1) A company may be wound up voluntarily —

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it be wound up voluntarily;

(b) if the company resolves by special resolution that it be wound up voluntarily.

(2) Before a company passes a resolution for voluntary winding up, it must give written notice of the resolution to the holder of any qualifying floating charge.

(3) Where notice is given under subsection (2), a resolution for voluntary winding up may be passed only —

(a) after the end of the period of 5 business days beginning with the day on which the notice was given; or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

Notice of resolution to wind up

67. (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

(2) A company and every officer of the company who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a

further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(3) For the purposes of this section, the liquidator is deemed to be an officer of the company.

Commencement of winding up

68. A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of resolution to wind up

69. (1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) Notwithstanding anything to the contrary in the articles of the company the corporate state and corporate powers of the company shall continue until the company is dissolved.

Avoidance of share transfers etc. after winding up resolution

70. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, is void.

Declaration of solvency

Statutory declaration of solvency

71. (1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for purposes of this Act unless —

(a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the Registrar before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest, within the period specified is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by subsection (3) to be delivered to the Registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine not exceeding \$1,000, and in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Distinction between members' and creditors' voluntary winding up

72. A winding up in the case of which a directors' statutory declaration under section 71 has been made is a members' voluntary winding up; and a winding up in the case of which such a declaration has not been made is a creditors' voluntary winding up.

*Chapter III**Members' voluntary winding up***Appointment of liquidator**

73. (1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs of the company and distributing its assets.

(2) On the appointment of a liquidator, all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

Power to fill vacancy in office of liquidator

74. (1) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose, a general meeting may be convened by any contributory or, if there were more than one liquidator, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the articles of the company, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

(4) Subject to sections 77 and 83, in the event of the winding up of a company continuing for more than one year, the liquidator shall —

(a) for each prescribed period, produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed, send a copy of the progress report to —

(i) the members of the company; and

(ii) such other persons as may be prescribed.

(5) A liquidator who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the

case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Final meeting prior to dissolution

75. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how it has been conducted and the property of the company has been disposed of, and thereon shall call a general meeting of the company for the purpose of laying before it the account and giving an explanation of it.

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place and object of the meeting, and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If a *quorum* is not present at the meeting, the liquidator shall, *in lieu* of the return mentioned in subsection (3), make a return that the meeting was duly summoned and that no *quorum* was present; and on such return being made, the requirement in subsection (3) as to the making of the return is deemed to be complied with.

(5) A liquidator who fails to —

(a) send the copy of the account or make the return in accordance with subsection (3); or

(b) call a general meeting of the company as required by subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Effect of company's insolvency

76. (1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest) within the period stated in the directors' statutory declaration under section 71.

- (2) In the case of the winding up of a company, the liquidator —
- (a) shall summon a meeting of the company's creditors for a day not later than the 28th day after the day on which he formed that opinion;
 - (b) shall send notices of the meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;
 - (c) shall cause notice of the meeting to be published once in the *Gazette*;
 - (d) may cause notice of the meeting to be advertised in such other manner as he thinks fit; and
 - (e) shall during the period before the day on which the meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require,

and the notice of the meeting shall state the duty imposed by paragraph (e).

- (3) The liquidator shall also —
- (a) make out a statement, in the prescribed form, as to the affairs of the company;
 - (b) lay that statement before the meeting; and
 - (c) attend and preside at that meeting.
- (4) The statement as to the affairs of the company shall show —
- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names, addresses and occupations of the company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.

(5) The statement shall be verified by the liquidator by an affidavit.

(6) A liquidator who, without reasonable excuse, fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(7) In this section, “relevant period” means the period of 6 months immediately preceding the day on which the notices summoning the meeting were sent, at which meeting it was resolved that the company be wound up voluntarily.

Conversion to creditors' voluntary winding up

77. As from the day on which the meeting is held under section 76, this Act has effect as if —

(a) the directors' statutory declaration under section 71 had not been made; and

(b) the meeting of the company's creditors and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 79,

and accordingly the winding up becomes a creditors' voluntary winding up.

Chapter IV

Creditors' voluntary winding up

Application of Chapter IV

78. (1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.

(2) Sections 79 and 80 do not apply where, under section 77, a members' voluntary winding up has become a creditors' voluntary winding up.

Meeting of company's creditors

79. (1) In the case of the winding up of a company, the company —
- (a) shall cause a meeting of the company's creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
 - (b) shall cause the notices of the meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held;
 - (c) shall cause notice of the meeting to be published once in the *Gazette*; and
 - (d) may cause notice of the meeting to be advertised in such other manner as the directors think fit.
- (2) The notice of the meeting shall state either —
- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or
 - (b) a place in the relevant locality where, on the 2 business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.
- (3) A company that fails to comply with subsection (1) or (2), without reasonable excuse, is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.
- (4) In this section, “relevant period” means the period of 6 months immediately preceding the day on which the notices summoning the company meeting were sent, at which meeting it was resolved that the company be wound up voluntarily.

Directors to lay statement of affairs before creditors

80. (1) The directors of the company shall —
- (a) make out a statement, in the prescribed form, as to the affairs of the company;
 - (b) cause that statement to be laid before the meeting of the company's creditors under section 79; and
 - (c) appoint one of their members to preside at that meeting,
- and it is the duty of the director so appointed to attend the meeting and preside over it.
- (2) The statement as to the affairs of the company shall show —
- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names, addresses and occupations of the company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The statement shall be verified by some or all of the directors by an affidavit.
- (4) If —
- (a) the directors, without reasonable excuse, fail to comply with subsection (1), (2) or (3); or
 - (b) any director, without reasonable excuse, fails to comply with subsection (1), so far as requiring him to attend and preside at the meeting,

the directors are, or the director is, guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Appointment of liquidator

81. (1) The creditors and the company at their respective meetings mentioned in section 79 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(1A) The nomination under subsection (1) shall be approved by a majority of the creditors.

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(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company and approved by the creditors.

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(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order —

(a) appointing that the person nominated as liquidator by the company to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment of liquidation committee

82. (1) The creditors at the meeting to be held under section 79 or at any subsequent meeting may, if they think fit, appoint a liquidation committee of not more than five persons to exercise the functions conferred on it by or under this Act.

(2) If a liquidation committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding five.

(3) The creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve —

(a) the persons mentioned in the resolution are not then, unless the Court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the Court under this provision, the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Meeting of company's creditors where winding up converted under section 77

83. Where, in the case of a winding up which was under section 77 converted to a creditors' voluntary winding up, a meeting of the company's creditors is held in accordance with section 76, any appointment of a liquidation committee made in that meeting is deemed to have been made by a meeting held in accordance with section 79.

Cesser of directors' powers

84. On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

Vacancy in office of liquidator

85. If a vacancy occurs by death, resignation or otherwise in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the Court), the creditors may fill the vacancy.

Progress report to company and creditors at year's end

86. (1) If the winding up of a company continues for more than one year, the liquidator shall —

(a) for each prescribed period, produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed, send a copy of the progress report to —

- (i) the members and creditors of the company; and
- (ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Final meeting prior to dissolution

87. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the property of the company has been disposed of, and thereon shall call a general meeting of the company and a meeting of the company's creditors for the purpose of laying the account before the meeting and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the *Gazette* specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one), the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If a *quorum* is not present at either such meeting, the liquidator shall, *in lieu* of the return required by subsection (3), make a return that the meeting was duly summoned and that no *quorum* was present; and on such return being made, the requirement in subsection (3) as to the making of the return is deemed to be complied with.

(5) A liquidator who fails to —

- (a) send the copy of the account or make the return; or
- (b) call a general meeting of the company or a meeting of the creditors as required by this section,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

*Chapter V**General provisions on members' and creditors' voluntary winding up***Distribution of property of company amongst members**

88. Subject to the provisions of this Act as to preferential payments, the property of a company in a voluntary winding up shall, on the winding up be applied in satisfaction of the company's liabilities *pari passu* and subject to such application, (unless the articles of the company otherwise provide) be distributed among the members according to their rights and interests in the company.

Appointment or removal of liquidator by Court

89. (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another.

Notice by liquidator of his appointment

90. (1) The liquidator shall, within 14 days after his appointment, publish in the *Gazette* and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

(2) A liquidator who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Acceptance of shares etc. as consideration for sale of property of company

91. (1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the business or property of the company is proposed to be transferred or sold —

(a) to another company (the transferee company), whether or not the latter is a company registered under the Companies Act (Chapter 39); or

(b) to a limited liability partnership (the transferee limited liability partnership).

(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up (the transferor company) may receive, in compensation or part compensation for the transfer or sale —

(a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company; or

(b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.

(3) The sanction requisite under subsection (2) is —

(a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring a general authority on the liquidator or an authority in respect of any particular arrangement; and

(b) in the case of a creditors' voluntary winding up, that of the Court or liquidation committee.

(4) Instead of subsection (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may —

(a) in the case of the transferee company, *in lieu* of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company; or

(b) in the case of the transferee limited liability partnership, *in lieu* of receiving cash or membership, or in addition thereto, participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.

(5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.

(6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a

year for winding up the company by the Court, the special resolution is not valid unless sanctioned by the Court.

Dissent from arrangement under section 91

92. (1) This section applies in the case of a voluntary winding up where, for the purposes of section 91(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that section.

(2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

Reference of questions to Court

93. (1) The liquidator, or any contributory or creditor, may apply to the Court —

(a) to determine any question arising in the winding up of a company; or

(b) to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make such other order on the application as the Court thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall enter it in his records relating to the company.

No liquidator appointed or nominated by company

94. (1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with sections 79 and 80, during the period before the appointment or nomination of a liquidator of the company.

(3) Subsection (2) does not apply in relation to the powers of the directors —

(a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company, without reasonable excuse, fail to comply with this section, they are liable to a fine not exceeding \$1,000.

Expenses of voluntary winding up

95. All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Saving for certain rights

96. The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the Court; but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

*Chapter VI**Winding up by Court**Jurisdiction***High Court jurisdiction**

97. The High Court has jurisdiction to wind up any company registered in Brunei Darussalam.

Proceedings taken in wrong Court

98. (1) Nothing in section 97 invalidates a proceeding by reason of its being taken in the wrong Court.

(2) The winding up of a company by the Court, or any proceedings in the winding up, may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which they ought to have been commenced.

*Grounds and effect of winding up petition***Circumstances in which company may be wound up by Court**

99. (1) A company may be wound up by the Court if —

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(a) the company has by special resolution resolved that the company be wound up by the Court;

(b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate of incorporation under the Companies Act (Chapter 39) relating to the requirement as to minimum share capital and more than a year has expired since it was so registered;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) at the time at which a moratorium for the company under section 9 comes to an end, no voluntary arrangement approved has effect in relation to the company;

(g) the Court is of the opinion that it is just and equitable that the company be wound up.

(h) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members.

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(2) On an application for winding up on the ground specified in subsection (1)(g) or (h), instead of making an order for the winding up, the Court may, if it is of the opinion that it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the company or one or more other members on terms to the satisfaction of the Court.

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Meaning of “inability to pay debts”

100. (1) A company is deemed unable to pay its debts if —

(a) a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding \$10,000 then due has served on the company, by leaving it at the company’s registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by an order under section 236.

(3) For the purposes of subsection (1)(c), in determining whether a company is unable to pay its debts, the Court shall take into account its contingent and prospective liabilities.

Application for winding up

101. (1) Subject to the provisions of this section, an application to the Court for the winding up of a company shall be by petition presented by —

- (a) the company;
- (b) the directors of the company;
- (c) any creditor or creditors (including any contingent or prospective creditor or creditors);
- (d) contributory or contributories;
- (e) a liquidator; or
- (f) all or any of those parties, together or separately.

(2) Except as mentioned in subsection (3), a contributory is not entitled to present a winding up petition unless —

- (a) the number of members is reduced to less than two; or
- (b) the shares in respect of which he is a contributory, or some of them, were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) A person who is liable to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 99(1)(e) and (g), and subsection (2) does not then apply; but unless the person is a contributory otherwise than under section 58, he may not, in his character as contributory, petition on any other ground.

(4) A winding up petition on the ground set out in section 99(1)(f) may only be presented by one or more creditors.

- (5) A winding up petition may be presented by the Minister —
- (a) if the ground of the petition is that set out in section 99(1)(b); or
 - (b) in a case falling within section 102.

(6) Where a company is being wound up voluntarily, a winding up petition may be presented by the Official Receiver attached to the Court as well as by any other person authorised in that behalf under the other provisions of this section; but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Petition for winding up on grounds of public interest

102. (1) Where it appears to the Minister from —

- (a) any report made or information obtained relating to company investigations under this Act and the Companies Act (Chapter 39);
- (b) any report, information or documents obtained under the Securities Markets Order, 2013 (S 59/2013);
- (c) any information obtained under the Companies Act (Chapter 39) relating to powers exercisable for purposes of assisting regulatory authorities outside Brunei Darussalam,

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the Court thinks it just and equitable for the company to be so.

(2) This section does not apply if the company is already being wound up by the Court.

Powers of Court on hearing of petition

103. (1) On hearing a winding up petition, the Court may —

- (a) dismiss the petition;
- (b) adjourn the hearing conditionally or unconditionally; or

(c) make an interim order or any other order that it thinks fit,

but the Court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion that —

(a) the petitioners are entitled to relief by winding up the company or by some other means; and

(b) in the absence of any other remedy, it would be just and equitable that the company be wound up,

shall make a winding up order; but this does not apply if the Court is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay, sist or restrain proceedings against company

104. (1) At any time after the presentation of a winding up petition, and before a winding up order has been made, the company, or any creditor or contributory, may —

(a) where any action or proceeding against the company is pending in Brunei Darussalam, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceeding is pending against the company, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding,

and the Court to which the application is so made may, as the case may be, stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.

(2) In the case of a company registered but not incorporated under the Companies Act (Chapter 39), where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any conditions of the company.

Avoidance of property dispositions etc.

105. In a winding up by the Court, any disposition of the property of the company, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up is, unless the Court otherwise orders, void.

Avoidance of attachments etc.

106. Where a company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

*Commencement of winding up***Commencement of winding up by Court**

107. (1) If, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

Consequences of winding up order

108. (1) On the making of a winding up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the Registrar, who shall enter it in his records relating to the company.

(2) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the Court and subject to such conditions as the Court may impose.

(3) When an order has been made for winding up a company registered but not incorporated under the Companies Act (Chapter 39), no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of

any debt of the company, except by leave of the Court, and subject to such conditions as the Court may impose.

(4) An order for winding up a company operates in favour of all the creditors and all contributories of the company as if made on the joint petition of a creditor and of a contributory.

Investigation procedures

Statement of affairs

109. (1) Where the Court has made a winding up order or appointed a provisional liquidator, the Official Receiver may require some or all of the persons mentioned in subsection (4) to make out and submit to him a statement, in the prescribed form, as to the affairs of the company.

- (2) The statement as to the affairs of the company shall show —
- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names, addresses and occupation of the company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed or as the Official Receiver may require.
- (3) The statement shall be verified by the persons required to submit it by an affidavit.

- (4) The persons referred to in subsection (1) are —
- (a) those who are or have at any time been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) those who are in the employment of the company, or have been in the employment of the company within that year, and are in

the opinion of the Official Receiver capable of giving the information which he requires;

(d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(5) Where any person is required under this section to submit a statement as to the affairs of the company to the Official Receiver, he shall do so, subject to subsection (6), before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the Official Receiver.

(6) The Official Receiver, if he thinks fit, may —

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2); or

(b) either when giving the notice mentioned in subsection (5) or subsequently, extend the period so mentioned,

and where the Official Receiver has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(7) A person who, without reasonable excuse, fails to comply with any obligation imposed under this section, is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(8) In this section —

“employment” includes employment under a contract for services;

“relevant date” means —

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding up order.

Investigation by Official Receiver

110. (1) Where a winding up order is made by the Court, it is the duty of the Official Receiver to investigate —

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, *prima facie* evidence of the facts stated in it.

Public examination of officers

111. (1) Where a company is being wound up by the Court, the Official Receiver or liquidator may at any time before the dissolution of the company, apply to the Court for the public examination of any person who —

- (a) is or has at any time been an officer of the company;
- (b) has acted as liquidator or judicial manager of the company or as receiver or judicial manager, or receiver of its property; or
- (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the Court otherwise orders, the Official Receiver or liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by —

- (a) one-half, in value, of the creditors of the company; or
- (b) three-quarters, in value, of the contributories of the company.

(3) On an application under subsection (1), the Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of

the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3)—

- (a) the Official Receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as a judicial manager of the property or business of the company;
- (d) any creditor of the company who has tendered a proof;
- (e) any contributory of the company.

Enforcement of section 111

112. (1) A person who, without reasonable excuse, fails at any time to attend his public examination under section 111, is guilty of a contempt of court and is liable to be punished accordingly.

- (2) Subsections (3) and (4) apply in a case where—
 - (a) a person, without reasonable excuse, fails at any time to attend his examination under section 111; or
 - (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section.
- (3) The Court may cause a warrant to be issued to a police officer for—
 - (a) the arrest of that person; and
 - (b) the seizure of any books, papers, records, money or goods in that person's possession.
- (4) The Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

*Appointment of liquidator***Appointment and powers of provisional liquidator**

113. (1) Subject to the provisions of this section, the Court may, at any time after the presentation of a winding up petition, appoint a liquidator provisionally.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding up order; and the Official Receiver or any other fit person may be appointed.

(3) The provisional liquidator shall carry out such functions as the Court may confer on him.

(4) When a liquidator is provisionally appointed by the Court, his powers may be limited by the order appointing him.

Functions of Official Receiver in relation to office of liquidator

114. (1) This section applies, subject to section 117, where an order for the winding up of a company has been made by the Court.

(2) The Official Receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The Official Receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the company, the Official Receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the Official Receiver.

(5) It is the duty of the Official Receiver —

(a) as soon as practicable in the period of 12 weeks beginning with the day on which the winding up order was made, to decide whether to exercise his power under subsection (4) to summon meetings;

(b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that

period, to the Court and to the company's creditors and contributories; and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors,

and accordingly, where the duty imposed by paragraph (c) arises before the Official Receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under subsection (5)(b) to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) to require the Official Receiver to summon meetings of the company's creditors and contributories.

Appointment by Minister

115. (1) In a winding up by the Court, the Official Receiver may, at any time when he is the liquidator of the company, apply to the Minister for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under section 114(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the Official Receiver to decide whether to refer the need for an appointment to the Minister.

(3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Minister shall make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Minister under subsection (3), the liquidator shall give notice of his appointment to the company's creditors or, if the Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) In that notice or advertisement, the liquidator shall —

(a) state whether he proposes to summon a general meeting of the company's creditors under section 118 for the purpose of determining (together with any meeting of the company's

contributors) whether a liquidation committee should be established under that section; and

(b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

Choice of liquidator at meetings of company's creditors and contributors

116. (1) This section applies where a company is being wound up by the Court and separate meetings of the company's creditors and contributors are summoned for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributors at their respective meetings may nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributors.

(4) In the case of different persons being nominated, any creditor or contributor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order —

(a) appointing the person nominated as liquidator by the contributors to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment by Court following judicial management or voluntary arrangement

117. (1) Where a winding up order is made immediately on the appointment of a judicial manager ceasing to have effect, the Court may appoint as liquidator of the company the person whose appointment as judicial manager has ceased to have effect.

(2) Where a winding up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company,

the Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding up order is made.

(3) Where the Court makes an appointment under this section, the Official Receiver does not become the liquidator as otherwise provided by section 114(2), and he has no duty under section 114(5)(a) or (b) in respect of the summoning of the meeting of the company's creditors or contributories.

Liquidation committees

Liquidation committee

118. (1) Where a winding up order has been made by the Court and separate meetings of the company's creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a liquidation committee to exercise the functions conferred on it by or under this Act.

(2) The liquidator (not being the Official Receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

(3) The liquidator (not being the Official Receiver) shall summon such general meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.

(4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and the meeting of the company's creditors or the meeting of the company's contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the Court otherwise orders.

(5) The liquidation committee is not to be able or required to carry out its functions at any time when the Official Receiver is liquidator; but at any such time its functions are vested in the Minister except to the extent that the rules otherwise provide.

(6) Where there is for the time being no liquidation committee, and the liquidator is a person other than the Official Receiver, the functions of

such a committee are vested in the Minister except to the extent that the rules otherwise provide.

Liquidator's functions

General functions in winding up by Court

119. (1) The functions of the liquidator of a company which is being wound up by the Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

(2) It is the duty of the liquidator of a company which is being wound up by the Court, if he is not the Official Receiver —

- (a) to furnish the Official Receiver with such information;
- (b) to produce to the Official Receiver, and allow 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 purposes of carrying out his functions in relation to the winding up.

Custody of property of company

120. When a winding up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

Vesting of property of company in liquidator

121. (1) When a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action or other

legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Duty to summon final meeting

122. (1) Subject to subsection (2), if it appears to the liquidator of a company which is being wound up by the Court that the winding up of the company is for practical purposes complete and the liquidator is not the Official Receiver, the liquidator shall summon a final general meeting of the company's creditors which shall —

(a) receive the liquidator's report of the winding up; and

(b) determine whether the liquidator should have his release under section 145.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the property of the company but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

(3) In the carrying out of his functions in the winding up, it is the duty of the liquidator to retain sufficient sums from the property of the company to cover the expenses of summoning and holding the meeting required by this section.

General powers of Court

Power to stay winding up

123. (1) The Court may at any time after an order for winding up —

(a) on the application of the liquidator, Official Receiver or any creditor or contributory; and

(b) on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed,

make an order staying the proceedings, altogether or for a limited time, on such conditions as the Court thinks fit.

(2) The Court may, before making an order, require the Official Receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall enter it in his records relating to the company.

Settlement of list of contributories and application of assets

124. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Debts due from contributory to company

125. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person who he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call.

(2) The Court in making such an order may —

(a) in the case of an unlimited company, allow to the contributory by way of set-off, any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or a judicial manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest), any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power to make calls

126. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Payment into bank of money due to company

127. (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may direct and to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered in the event of a winding up by the Court are subject in all respects to the orders of the Court.

Order on contributory to be conclusive evidence

128. (1) An order made by the Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid, is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

Power to exclude creditors not proving in time

129. The Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

130. The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

Inspection of books by creditors etc.

131. (1) The Court may, at any time after making a winding up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

Payment of expenses of winding up

132. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to arrest absconding contributory

133. The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to —

(a) leave Brunei Darussalam or otherwise to abscond; or

(b) remove or conceal any of his property for the purpose of evading payment of calls,

may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

Powers of Court to be cumulative

134. The powers conferred on the Court by this Act are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation of powers to liquidator

135. (1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court in respect of the following matters —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets;
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books and papers to the liquidator;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) The liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without that special leave or the sanction of the liquidation committee.

*Chapter VII**Liquidators***Style and title of liquidators**

136. The liquidator of a company shall be described —

- (a) where a person other than the Official Receiver is the liquidator, by the style of "the liquidator" of the particular company; or

- (b) where the Official Receiver is the liquidator, by the style of "the Official Receiver and liquidator" of the particular company,

and in neither case shall he be described by an individual name.

*Powers and duties***Voluntary winding up**

137. (1) This section applies where a company is being wound up voluntarily, but is subject to section 138 in the case of a creditors' voluntary winding up.

(2) The liquidator may —

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company; and

(b) in the case of a creditors' voluntary winding up, with the sanction of the Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

exercise any of the powers specified in Part 1 of Schedule 3.

(3) The liquidator may, without sanction, exercise any of the powers specified in Part 2 of Schedule 3 and any of the general powers specified in Part 3 of Schedule 3.

(4) The liquidator may —

(a) exercise the power of the Court to settle a list of contributories (which list is *prima facie* evidence of the liability of the persons named in it to be contributories);

(b) exercise the power of the Court to make calls;

(c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose he may think fit.

(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company, he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

Creditors' voluntary winding up

138. (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The exercise by the liquidator of the power to sell any of the property of the company shall not be challenged on the ground of any prior inhibition.

(3) The powers conferred on the liquidator by section 137 shall not be exercised, except with the sanction of the Court, during the period before the holding of the meeting of the company's creditors under section 79.

(4) Subsection (3) does not apply in relation to the power of the liquidator —

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the company's assets.

(5) The liquidator shall attend the meeting of the company's creditors held under section 79 and shall report to the meeting on any exercise by him of his powers.

(6) If default is made by —

(a) the company in complying with section 79(1) or (2); or

(b) the directors in complying with section 80(1), (2) or (3),

the liquidator shall, within 7 days of the relevant date, apply to the Court for directions as to the manner in which that default is to be remedied.

(7) A liquidator who, without reasonable excuse, fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine

not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(8) In this section, “relevant date” means the date on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

Winding up by Court

139. (1) Where a company is being wound up by the Court, the liquidator may —

(a) with the sanction of the Court or liquidation committee, exercise any of the powers specified in Parts 1 and 2 of Schedule 3; and

(b) with or without that sanction, exercise any of the general powers specified in Part 3 of Schedule 3.

(2) Where the liquidator (not being the Official Receiver), in exercise of the powers conferred on him by this Act —

(a) disposes of any property of the company to a person who is connected with the company; or

(b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Supplementary powers

140. (1) This section applies in the case of a company which is being wound up by the Court.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by

resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth, in value, of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by an act or decision of the liquidator, that person may apply to the Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as the Court thinks just.

Enforcement of liquidator's duty to make returns etc.

141. (1) If a liquidator who has made any default —

(a) in filing, delivering or making any return, account or other document; or

(b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court has the powers as specified in subsection (2).

(2) On an application made by any creditor or contributory of the company, or by the Registrar, the Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this section prejudices the operation of any other written laws imposing penalties on a liquidator in respect of any such default as is mentioned in subsection (2).

*Removal and vacation of office***Removal etc. in voluntary winding up**

142. (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to subsection (3), the liquidator may be removed from office only by an order of the Court or —

(a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose; or

(b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the Court under section 89, a meeting such as is mentioned in subsection (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules —

(a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting; or

(b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Registrar.

(6) Where —

(a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 75; or

(b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 87,

the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with section 75(3) or 87(3) and has given notice to the Registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

Removal etc. in winding up by Court

143. (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the Court, or of a provisional liquidator.

(2) Subject as follows, the liquidator may be removed from office only by an order of the Court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where —

(a) the Official Receiver is the liquidator otherwise than in succession under section 114(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or

(b) the liquidator was appointed by the Court otherwise than under section 116(4)(a) or 117(1), or was appointed by the Minister,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) A liquidator appointed by the Minister may be removed from office by a direction of the Minister.

(5) A liquidator or provisional liquidator, not being the Official Receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Court.

(7) Where a final meeting has been held under section 122, the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the Court and Registrar that the meeting has been held and of the decisions (if any) of the meeting.

Release of liquidator

Release in voluntary winding up

144. (1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time —

(a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the Registrar in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the Court, or who has vacated office under section 142(4), such time as the Minister may, on the application of that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under section 142(6)(a), the time at which he vacated office;

(e) in the case of a person who has vacated office under section 142(6)(b) —

(i) if the final meeting of the creditors referred to in that section has resolved against that person's release, such time as the Minister may, on an application by that person, determine; and

(ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) Where a liquidator has his release under subsection (2), he is, with effect from the time specified in that subsection, discharged from all liability both in respect of his acts or omissions in the winding up and otherwise in relation to his conduct as liquidator.

(4) Nothing in this section prevents the exercise, in relation to a person who has had his release under subsection (2), of the powers of the Court under section 184(3).

Release in winding up by Court

145. (1) This section applies with respect to the release of the liquidator of a company which is being wound up by the Court, or of a provisional liquidator.

(2) Where the Official Receiver has ceased to be liquidator and a person becomes liquidator in his stead, the Official Receiver has his release with effect from the following time —

(a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Minister, the time at which the Official Receiver gives notice to the Court that he has been replaced;

(b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the Official Receiver while he is a liquidator gives notice to the Minister that the winding up is for practical purposes complete, he has his release with effect from such time as the Minister may determine.

(4) A person other than the Official Receiver who has ceased to be a liquidator has his release with effect from the following time —

(a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the Court in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the Court or the Minister, or who has vacated office under section 143(5) or (7), such time as the Minister may, on an application by that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under section 143(7) —

- (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Minister may, on an application by that person, determine; and
- (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the Court may, on an application by him, determine.

(6) Where the Official Receiver or a liquidator or provisional liquidator has his release under this section, he is, with effect from the time specified in this section, discharged from all liability both in respect of his acts or omissions in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) Nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the powers of the Court under section 184(3).

Chapter VIII

General provisions with respect winding up

Proof of debts

146. (1) In every winding up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against

the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) In the winding up of an insolvent company —

(a) the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons; and

(b) all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments

147. (1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

(a) firstly, the amount payable to any creditor for any unsecured credit granted by the creditor after the commencement of any insolvency proceedings;

(b) secondly, the costs and expenses of the winding up, including the taxed costs of the applicant for the winding up order payable, the remuneration of the liquidator and the costs of any audit carried out;

(c) thirdly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;

(d) fourthly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or *ex gratia* payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(e) fifthly, all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding up by the company as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax;

(f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding up; and

(g) seventhly, the amount of all tax or rates assessed and due under any written law before the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(c) and (d) shall not exceed an amount that is equivalent to 5 months' salary whether for time or piecework in respect of services rendered by the employee to the company or \$7,500, whichever is the lesser.

(3) The Minister may, by order published in the *Gazette*, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1)(c) and (d).

(4) For the purposes of —

(a) subsection (1)(c) and (d) —

“employee” means a person who has entered into or works under a contract of service with an employer and includes a subcontractor of labour;

“wages or salary” is deemed to include —

- (i) all arrears of money due to a subcontractor of labour;
- (ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or *in lieu* of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding up; and

(iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(b) subsection (1)(d) —

“*ex gratia* payment” means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any reorganisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

“retrenchment benefit” means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any reorganisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner of Labour.

(5) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(7) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1)(a), (b), (c), (d), (e) and (f) and any amount payable in priority by virtue of subsection (6), those debts shall have priority over the claims of the debenture holders under any floating charge created by the company (which charge, as created, was a floating charge), and shall be paid accordingly out of any property comprised in or subject to that charge.

(8) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if —

(a) any such liability is incurred by the company (before or after the commencement of the winding up); and

(b) an amount in respect of that liability is or has been received by the company or the liquidator from the insurer,

the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining not discharged in priority to all payments in respect of the debts referred to in subsection (1).

(9) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (8) shall limit the rights of the third party in respect of the balance.

(10) Notwithstanding anything in subsection (1), where a company has given security for the payment or repayment of any amount to which subsection (1)(g) relates, that subsection applies only in relation to the balance of any such amount remaining due after deducting from the net amount realised from such security.

(11) Where in any winding up, assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.

*Effect on other transactions***Undue preference**

148. (1) Subject to this Act and such modifications as may be prescribed, any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable under the Bankruptcy Act (Chapter 67) shall in the event of the company being wound up, be void or voidable in like manner.

(2) For the purposes of this section, the date which corresponds with the date of making of the application for a bankruptcy order in the case of an individual shall be —

- (a) in the case of a winding up by the Court —
 - (i) the date of the making of the winding up application; or
 - (ii) where before the making of the winding up application a resolution has been passed by the company for voluntary winding up, the date on which the resolution to wind up the company voluntarily is passed,

whichever is the earlier; and

- (b) in the case of a voluntary winding up, the date on which the winding up is deemed by this Act to have commenced.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Effect of floating charge

149. A floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5 per cent per annum.

Liquidator's right to recover in respect of certain sales to or by company

150. (1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of 2 years before the commencement of the winding up of the company from —

(a) a person who was at the time of the acquisition a director of the company; or

(b) a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the business, property or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of 2 years before the commencement of the winding up of the company to —

(a) a person who was at the time of the sale a director of the company; or

(b) a company of which, at the time of the sale, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section, “cash consideration”, in relation to an acquisition or sale by a company, means consideration for such acquisition or sale payable otherwise than by the issue of shares in the company.

Disclaimer of onerous property

151. (1) Subject to subsection (2), where any part of the property of a company consists of —

(a) any estate or interest in land which is burdened with onerous covenants;

(b) shares in corporations;

(c) unprofitable contracts; or

(d) any other property that is not saleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of an onerous act, or to the payment of a sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised an act of ownership in relation thereto, may, with leave of the Court or the liquidation committee and, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property.

(2) Where any property as described in subsection (1) has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof or such extended period as is allowed by the Court.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The Court or liquidation committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such conditions of granting leave, and make such other order in the matter as the Court or committee thinks just.

(5) (a) The liquidator shall not be entitled to disclaim if —

- (i) an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim; and
- (ii) the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or liquidation committee, given notice to the applicant that he intends to apply to the Court or liquidation committee for leave to disclaim.

(b) In the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator is deemed to have adopted it.

(6) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(7) The Court may, on the application of a person who claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just.

(8) On any vesting order under subsection (7) being made and a copy and an office copy thereof being lodged with the Registrar and the Official Receiver, respectively, and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(9) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order

in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except on the terms of making that person —

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any under-lessee or mortgagee declining to accept a vesting order on such terms shall be excluded from all interest in and security on the property, and, if there is no person claiming under the company who is willing to accept an order on such terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(10) Any person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Interpretation

152. For the purposes of sections 153 and 154 —

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all chattels personal.

Restriction of rights of creditor as to execution or attachment

153. (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but —

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such conditions as the Court thinks fit.

(2) For the purposes of this section —

- (a) an execution against goods is completed by seizure and sale;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Duties of bailiff as to goods taken in execution

154. (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that —

- (a) a provisional liquidator has been appointed;
- (b) a winding up order has been made; or
- (c) a resolution for voluntary winding up has been passed,

the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding \$100, the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall —

(a) deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days; and

(b) if within that time, notice is served on him of —

(i) an application for the winding up of the company having been made; or

(ii) a meeting having been called at which there is to be proposed a resolution for the voluntary winding up,

and an order is made or a resolution is passed for the winding up, pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such conditions as the Court thinks fit.

Offences

Offences by officers of companies in liquidation

155. (1) Any person who, being a past or present officer or a contributory of a company which is being wound up —

(a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator —

(i) all the property movable and immovable of the company, and how and to whom and for what consideration; and

(ii) when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

- (b) does not deliver up to the liquidator, or as he directs —
- (i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within 12 months next before the commencement of the winding up or at any time thereafter —
- (i) has concealed any part of the property of the company to the value of \$200 or more, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of \$200 or more;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book and paper affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book and paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;

(d) makes any material omission in any statement relating to the affairs of the company;

(e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the liquidator thereof;

(f) prevents the production of any book and paper affecting or relating to the property or affairs of the company;

(g) within 12 months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or

(h) within 12 months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) It shall be a defence to a charge under subsection (1)(a), (b) or (c)(i), (vii) or (viii) or subsection 1(d) if the accused proves that he had no intent to defraud, and to a charge under subsection (1)(c)(iii) or (iv) or subsection (1)(f) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

*Dissolution***Power of Court to declare dissolution of company void**

156. (1) Where a company has been dissolved, the Court may at any time within 2 years after the date of dissolution, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order on such conditions as the Court thinks fit declaring the dissolution to have been void, and thereon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

157. (*Repealed by S 49/2018*).

Official Receiver to act as representative of defunct company in certain events

158. (1) Where, after a company has been dissolved, it is proved to the satisfaction of the Official Receiver that —

(a) the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(b) in order to carry out, complete or give effect thereto, some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

the Official Receiver may, as representing the company or its liquidator under this section, do or cause to be done any such act.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the company, if existing, had duly executed such instrument or document.

Outstanding assets of defunct company to vest in Official Receiver

159. (1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Brunei Darussalam which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not obtained, realised on or otherwise disposed of or dealt with by the company or its liquidator, such property except called and uncalled capital, shall, for the purposes of sections 160, 161 and 162 and notwithstanding any other written law or rule of law to the contrary, by the operation of this section, be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

Disposal of outstanding interests in property

160. (1) On proof to the satisfaction of the Official Receiver that there is vested in him by operation of section 159 or by operation of any corresponding previous written law or of a law of a designated country on any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may —

(a) sell or otherwise dispose of or deal with such property solely or in concurrence with any other person in such manner, for such consideration by public auction, public tender or private contract and on such conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient; and

(b) make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred on him by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by sections 158 to 162 shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by those sections and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid.

(5) In this section, “corresponding previous written law” means any other written law relating to companies which has been at any time in force in Brunei Darussalam and which corresponds with any provision in this Act.

Liability of Official Receiver and Government as to property vested in Official Receiver

161. (1) Subject to subsection (2), property vested in the Official Receiver by operation of section 159 or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company.

(2) There shall not be imposed on the Official Receiver or the Government, any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

(3) In this section, “corresponding previous written law” means any other written law relating to companies which has been at any time in force in Brunei Darussalam and which corresponds with any provision in this Act.

Accounts and audit

162. (1) The Official Receiver shall —

(a) record in a register, a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of section 159 and of his dealings therewith;

- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.
- (2) The Auditor General shall have all the powers in respect of such accounts as are conferred on him by any other written law relating to audit of public accounts.

General

Rescission of contracts by Court

163. (1) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Power to make over assets to employees

164. (1) On the winding up of a company (whether by the Court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to provide for employees or former employees on cessation or transfer of business.

(2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in subsection (1) if—

- (a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up;
- (b) the exercise of the power has been sanctioned by a resolution of the company; and
- (c) any requirement of the articles of the company as to the exercise of making any such provision are complied with.

(3) Any payment which may be made by a company under this section (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the Court, the exercise by the liquidator of his powers under this section is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) apply notwithstanding anything in section 88 or any rule of law to the contrary.

Notification that company is in liquidation

165. (1) When a company is being wound up, whether by the Court or voluntarily —

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or an officer or a liquidator of the company, or a receiver or a judicial manager of the property of the company, and

(b) all the company's websites,

must contain a statement that the company is being wound up.

(2) A company and any officer or liquidator of the company and any receiver or judicial manager who knowingly and wilfully authorises or permits the non-compliance of this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Interest on debts

166. (1) In a winding up, interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in

paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.

Documents exempt from stamp duty

167. (1) In the case of a winding up by the Court, or of a creditors' voluntary winding up, subsection (2) applies as regards exemption from duties chargeable under the laws relating to stamp duties.

(2) The following documents are exempt from stamp duty —

(a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets; and

(b) every writ, order, certificate, or other instrument or writing relating solely to the property of a company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

(3) In this section, "assurance" includes deed, conveyance, assignment and surrender.

Information as to pending liquidations

168. (1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and the position of, the liquidation.

(2) A liquidator who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Resolutions passed at adjourned meetings

169. Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

Meetings to ascertain wishes of creditors or contributories

170. (1) The Court may —

(a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by sufficient evidence); and

(b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory.

Judicial notice of Court documents

171. In all proceedings under this Part, all Courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Court appended to or impressed on any document made, issued or signed under the provisions of this Act or of the Companies Act (Chapter 39), or any official copy of such a document.

Commissioner for receiving evidence

172. (1) Any person exercising jurisdiction as a Judge of the Court to which the reference is made shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.

(2) The Judge has, in the matter referred, the same power of —

(a) summoning and examining witnesses;

- (b) requiring the production and delivery of documents;
- (c) punishing defaults by witnesses; and
- (d) allowing costs and expenses to witnesses,

as the Court which made the winding up order.

(3) The powers under subsection (2) are in addition to any which the Judge might lawfully exercise apart from this section.

(4) The examination so taken shall be returned or reported to the Court which made the order in such manner as that Court requests.

Affidavits etc.

173. (1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Brunei Darussalam or elsewhere in the Commonwealth before —

- (a) any Court, Judge or person lawfully authorised to take and receive affidavits; or
- (b) any of the Government consuls or vice-consuls in any place outside Brunei Darussalam.

(2) All Courts, Judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Chapter IX

Dissolution of companies after winding up

Dissolution after voluntary winding up

174. (1) This section applies, in the case of a company wound up voluntarily, where the liquidator has sent to the Registrar his final account and return under section 75 or 87.

(2) The Registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return, the company is deemed to be dissolved.

(3) The Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(4) It is the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar a copy of the order for registration; and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and, in the case of a continuing offence, with a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Early dissolution

175. (1) This section applies where an order for the winding up of a company has been made by the Court.

(2) The Official Receiver, if —

(a) he is the liquidator of the company; and

(b) it appears to him that —

(i) the realisable assets of the company are insufficient to cover the expenses of the winding up; and

(ii) the affairs of the company do not require any further investigation,

may at any time apply to the Registrar for the early dissolution of the company.

(3) Before making that application, the Official Receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors and contributories and, if there is a receiver of the company, to that receiver.

(4) With the giving of that notice, the Official Receiver ceases (subject to any direction under section 176) to be required to perform any

duty imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2).

(5) On the receipt of the Official Receiver's application under subsection (2), the Registrar shall forthwith register it and, at the end of the period of 3 months beginning with the day of the registration of the application, the company shall be dissolved.

(6) The Minister may, on the application of the Official Receiver or any other person who appears to the Minister to be interested, give directions under section 176 at any time before the end of that period.

Consequence of notice under section 175

176. (1) Where a notice has been given under section 175(3), the Official Receiver or any creditor or contributory of the company, or the receiver of the company (if there is one) may apply to the Minister for directions under this section.

(2) The grounds on which that application may be made are that —

(a) the realisable assets of the company are sufficient to cover the expenses of the winding up;

(b) the affairs of the company do require further investigation; or

(c) for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section —

(a) are directions making such provision as the Minister thinks fit for enabling the winding up of the company to proceed as if no notice had been given under section 175(3); and

(b) may, in the case of an application under section 175(5), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Minister thinks fit.

(4) It is the duty of the person on whose application any direction is given under this section, or in whose favour an appeal with respect to an

application for such direction is determined, within 7 days after the giving of the direction or the determination of the appeal, to deliver to the Registrar for registration such a copy of the direction or determination as is prescribed.

(5) A person who, without reasonable excuse, fails to deliver a copy as required by subsection (4), is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Dissolution otherwise than under sections 175 and 176

177. (1) This section applies where the Registrar receives —

(a) a notice served for the purposes of section 143(7); or

(b) a notice from the Official Receiver that the winding up of a company by the Court is complete.

(2) The Registrar shall, on receipt of the notice, forthwith register it; and, subject to subsections (3), (4) and (5) at the end of the period of 3 months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The Minister may, on the application of the Official Receiver or any other person who appears to the Minister to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Minister thinks fit.

(4) It is the duty of the person —

(a) on whose application a direction is given under subsection (3); or

(b) in whose favour an appeal with respect to an application for such a direction is determined,

within 7 days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the Registrar, for registration, such a copy of the direction, determination or order as is prescribed.

(5) A person who, without reasonable excuse, fails to deliver a copy as required by subsection (4), is guilty of an offence and liable on conviction

to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Chapter X

Malpractice; penalisation of companies and company officers; investigations and prosecutions

Offences of fraud, deception etc.

Fraud etc. in anticipation of winding up

178. (1) When a company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has —

- (a) concealed any part of the company's property to the value of \$200 or more, or concealed any debt due to or from the company;
- (b) fraudulently removed any part of the company's property to the value of \$200 or more;
- (c) concealed, destroyed, mutilated or falsified any book and paper affecting or relating to the company's property or affairs;
- (d) made any false entry in any book and paper affecting or relating to the company's property or affairs;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs; or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(2) Such a person is deemed to have committed an offence if within the period mentioned in subsection (1), he has been privy to the doing by others of any of the things mentioned in subsection (1)(c), (d) and (e); and he

commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in subsection (1)(a) to (f), or is privy to the doing by others of any of the things mentioned in subsection (1)(c) to (e).

(3) It is a defence —

(a) for a person charged under subsection (1)(a) or (f) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to defraud; and

(b) for a person charged under subsection (1)(c) or (d) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.

(5) A person guilty of an offence under this section is liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(6) The money sums specified in subsection (1)(a) and (b) are subject to increase or reduction by order under section 236.

Transactions in fraud of creditors

179. (1) Subject to subsection (2), when a company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company —

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property; or

(b) has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) A person is not guilty of an offence under this section —

(a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the winding up; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

Misconduct in course of winding up

180. (1) When a company is being wound up, whether by the Court or voluntarily, any person who, being a past or present officer of the company —

(a) does not to the best of his knowledge and belief, fully and truly disclose to the liquidator all the property of the company, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business);

(b) does not deliver up to the liquidator (or as he directs), all such part of the property of the company as is in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator (or as he directs), all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable; or

(e) after the commencement of the winding up, prevents the production of any book and paper affecting or relating to the property or affairs of the company,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Such a person commits an offence if after the commencement of the winding up, he attempts to account for any part of the property of the company by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up.

(3) It is a defence for —

(a) a person charged under subsection (1)(a), (b) or (c) to prove that he had no intent to defraud; and

(b) a person charged under subsection (1)(e) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

Falsification of company's books etc.

181. When a company is being wound up, an officer or contributory of the company who —

(a) destroys, mutilates, alters or falsifies any books, papers or securities; or

(b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term of 2 years or both.

Material omissions from statement relating to affairs of company

182. (1) When a company is being wound up, whether by the Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the affairs of the company is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) When a company has been ordered to be wound up by the Court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.

(3) It is a defence for a person charged under this section to prove that he had no intent to defraud.

False representations to creditors

183. (1) When a company is being wound up, whether by the Court or voluntarily, any person who, being a past or present officer of the company, makes any false representation or commits any other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the company's affairs or to the winding up, is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Any such person is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

Penalisation of directors and officers

Summary remedy against delinquent directors, liquidators etc.

184. (1) This section applies if in the course of the winding up of a company it appears that a person who —

- (a) is or has been an officer of the company;
- (b) has acted as liquidator or receiver of the company; or
- (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the company.

(3) The Court may, on the application of the Official Receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him —

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the Court thinks just; or

(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator of the company is not exercisable, except with leave of the Court, after he has had his release.

(5) The power of a contributory to make an application under subsection (3) is not exercisable except with leave of the Court, but is exercisable notwithstanding that he will not benefit from any order the Court may make on the application.

Fraudulent trading

185. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, subsection (2) applies.

(2) The Court, on the application of the liquidator, may declare that any person who was knowingly party to the carrying on of the business in the manner under subsection (1) is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

Wrongful trading

186. (1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if —

(a) the company has gone into insolvent liquidation;

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(c) that person was a director of the company at that time.

(3) The Court shall not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2)(b) was first satisfied in relation to him, that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both —

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) This section, is without prejudice to section 185.

Proceedings under section 185 or 186

187. (1) On the hearing of an application under section 185 or 186, the liquidator may himself give evidence or call witnesses.

(2) Where under section 185 or 186 the Court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the Court may —

- (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and
- (b) make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) Where the Court makes a declaration under section 185 or 186 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(4) Sections 185 and 186 apply notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

(5) For the purposes of subsection (2), “assignee” —

- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage or the formation of a civil partnership) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

Restriction on re-use of company names

188. (1) This section applies to a person where a company (the liquidating company) has gone into insolvent liquidation on or after the appointed day and he was a director of the company at any time in the period of 12 months ending with the day before it went into liquidation.

(2) For the purposes of this section, a name is a prohibited name in relation to such a person if —

(a) it is a name by which the liquidating company was known at any time in that period of 12 months; or

(b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.

(3) Except with leave of the Court or in such circumstances as may be prescribed, a person to whom this section applies shall not, at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation —

(a) be a director of any other company that is known by a prohibited name;

(b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company; or

(c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) On an application for leave under subsection (3), the Minister or Official Receiver may appear and call the attention of the Court to any matter which seems to him to be relevant.

(5) References in this section, in relation to any time, to a name by which a company is known are to —

(a) the name of the company at that time; or

(b) any name under which the company carries on business at that time.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this section, “company” includes a company which may be wound up under Part 6.

Personal liability for debts, following contravention of section 188

189. (1) A person is personally responsible for all the relevant debts of a company if at any time —

(a) in contravention of section 188, he is involved in the management of the company; or

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without leave of the Court) by a person whom he knows at that time to be in contravention in relation to the company of section 188.

(2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section, the relevant debts of a company are —

(a) in relation to a person who is personally responsible under subsection (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and

(b) in relation to a person who is personally responsible under subsection (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that subsection.

(4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given (without leave of the Court) by a person whom he knew at that time to be in contravention in relation to the company of section 188 is

presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this section, “company” includes a company which may be wound up under Part 6.

Investigation and prosecution of malpractice

Prosecution of delinquent officers and members of company

190. (1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the Minister.

(2) If in the case of a winding up by the Court, it appears to the liquidator, not being the Official Receiver, that any past or present officer or any member of the company, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the Official Receiver.

(3) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer or any member of the company, has been guilty of an offence in relation to the company for which he is criminally liable, he shall —

(a) forthwith report the matter to the Minister; and

(b) furnish to the Minister such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Minister requires.

(4) Where a report is made to the Minister under subsection (3) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under the Companies Act (Chapter 39) to investigate the affairs of the company.

(5) If it appears to the Court in the course of a voluntary winding up that —

- (a) any past or present officer of the company, or any member of it, has been guilty as mentioned in subsections (1), (2) and (3); and
- (b) no report with respect to the matter has been made by the liquidator under subsection (3),

the Court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

(6) On a report being made accordingly under subsection (5), this section applies as though the report had been made in pursuance of subsection (3).

Obligations arising under section 190

191. (1) For the purpose of an investigation by the Minister in consequence of a report made to him under section 190(4), any obligation imposed on a person by any provision of the Companies Act (Chapter 39) to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in section 190(4) is to be regarded as an obligation similarly to assist the Minister in his investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by section 190(4) may be used in evidence against him.

(3) In criminal proceedings in which that person is charged with an offence to which this subsection applies —

- (a) no evidence relating to the answer may be adduced; and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(4) Where criminal proceedings are instituted by the Public Prosecutor or Minister, following any reference or report under section 190, it is the duty of the liquidator and every officer and agent of the company

past and present (other than the defendant or defender) to give to the Public Prosecutor or Minister, as the case may be, all assistance in connection with the prosecution which he is reasonably able to give.

(5) If a person fails or neglects to give assistance in the manner required by subsection (4), the Court may, on the application of the Public Prosecutor or Minister, as the case may be, direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

PART 6

WINDING UP OF UNREGISTERED COMPANIES

Meaning of “unregistered company”

192. For the purposes of this Part, “unregistered company” includes any partnership, association and company except —

(a) a company incorporated or registered under the Companies Act (Chapter 39); or

(b) a partnership, an association or a company which consists of less than 8 members and is not a foreign partnership, association or company.

Winding up of unregistered companies

193. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act; and all the provisions of this Act on winding up apply to an unregistered company with the exceptions and additions mentioned in subsections (2), (3) and (4).

(2) An unregistered company shall not be wound up under this Part unless it has a principal place of business situated in Brunei Darussalam.

(3) For the purposes of determining a Court’s winding up jurisdiction, an unregistered company is deemed to be registered in Brunei Darussalam if it has a principal place of business situated in Brunei Darussalam.

(4) The circumstances in which an unregistered company may be wound up are as follows —

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the Court is of opinion that it is just and equitable that the company be wound up.

Inability to pay debts: unpaid creditor for \$10,000 or more

194. (1) An unregistered company is deemed (for the purposes of section 193) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding \$10,000 then due and —

- (a) the creditor has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, judicial manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due; and
- (b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in subsection (1) is subject to increase or reduction by rules; but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

Inability to pay debts: debt remaining unsatisfied after action brought

195. An unregistered company is deemed (for the purposes of section 193) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and —

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the

principal place of business of the company (or by delivering it to the secretary, or some director, judicial manager or principal officer of the company, or by otherwise serving it in such manner as the Court may approve or direct); and

(b) the company has not within 3 weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

Inability to pay debts: other cases

196. (1) An unregistered company is deemed (for purposes of section 193) unable to pay its debts, if—

(a) execution or other process issued on a judgment, decree or order obtained in any Court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(b) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Company incorporated outside Brunei Darussalam may be wound up though dissolved

197. Where a company incorporated outside Brunei Darussalam which has been carrying on business in Brunei Darussalam ceases to carry on business in Brunei Darussalam, it may be wound up as an unregistered company under this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Contributors in winding up of unregistered company

198. (1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of—

(a) any debt or liability of the company;

(b) any sum for the adjustment of the rights of members among themselves;

(c) the expenses of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in subsection (1).

Power of Court to stay or restrain proceedings

199. The provisions of this Part with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

Actions stayed on winding up order

200. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except with leave of the Court, and subject to such conditions as the Court may impose.

PART 7

GENERAL PROVISIONS APPLYING TO COMPANIES WHICH ARE
INSOLVENT OR IN LIQUIDATION*Office holders***Holders of office to be qualified insolvency practitioners**

201. (1) Where a receiver of a company is appointed, he must be a person who is so qualified.

(2) Where a company goes into liquidation, the liquidator must be a person who is so qualified.

(3) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(4) Subsections (2) and (3) are without prejudice to any other written law under which the Official Receiver is to be, or may be, liquidator or provisional liquidator.

Appointment to office of two or more persons

202. (1) This section applies if an appointment or nomination of any person to the office of receiver, liquidator or provisional liquidator —

(a) relates to more than one person; or

(b) has the effect that the office is to be held by more than one person.

(2) The appointment or nomination shall declare whether any act required or authorised under any other written law to be done by the receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

Validity of acts of office holder

203. The acts of an office holder as receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

Management by judicial managers, liquidators etc.

Getting in property of company

204. (1) This section applies in the case of a company where —

- (a) the company enters judicial management;
- (b) a receiver is appointed;
- (c) the company goes into liquidation; or
- (d) a provisional liquidator is appointed,

and “office holder” means the judicial manager, receiver, liquidator or provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office holder.

(3) Where the office holder —

- (a) seizes or disposes of any property which is not property of the company; and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

subsection (4) applies.

(4) For the purposes of this section, the office holder —

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office holder’s own negligence; and
- (b) has a *lien* on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Duty to co-operate with office holder

205. (1) (a) This section applies to section 202.

(b) This section also applies, in the case of a company in respect of which a winding up order has been made by the Court, as if references to the office holder included the Official Receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in subsection (3) shall —

(a) give to the office holder, such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office holder may at any time after the effective date reasonably require; and

(b) attend on the office holder at such times as the office holder may reasonably require.

(3) The persons referred to in subsection (2) are —

(a) those who are or have at any time been officers of the company;

(b) those who have taken part in the formation of the company at any time within one year before the effective date;

(c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office holder's opinion capable of giving information which he requires;

(d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question; and

(e) in the case of a company being wound up by the Court, any person who has acted as judicial manager, receiver or liquidator of the company.

(4) A person who, without reasonable excuse, fails to comply with any obligation imposed by this section is guilty of an offence and liable on

conviction to a fine not exceeding \$1,000, and, in the case of a continuing offence, with a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(5) For the purposes of subsections (2) and (3), “effective date” is whichever is applicable of the following dates —

- (a) the date on which the company entered judicial management;
- (b) the date on which the receiver was appointed or, if he was appointed in succession to another receiver, the date on which the first of his predecessors was appointed;
- (c) the date on which the provisional liquidator was appointed; and
- (d) the date on which the company went into liquidation.

Inquiry into company's dealings etc.

206. (1) (a) This section applies to section 204.

(b) This section also applies in the case of a company in respect of which a winding up order has been made by the Court, as if references to the office holder included the Official Receiver, whether or not he is the liquidator.

(2) The Court may, on the application of the office holder, summon to appear before it —

(a) any officer of the company;

(b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company; or

(c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The Court may require any such person as is mentioned in subsection (2) to submit to the Court an account of his dealings with the

company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in subsection 2(c).

(4) An account submitted to the Court under subsection (3) must be contained in a witness statement verified by an affidavit.

(5) Subsections (6) and (7) apply in a case where —

(a) a person, without reasonable excuse, fails to appear before the Court when he is summoned to do so under this section; or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this section.

(6) The Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a police officer for —

(a) the arrest of that person; and

(b) the seizure of any books, papers, records, money or goods in that person's possession.

(7) The Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

Court's enforcement powers under section 206

207. (1) If it appears to the Court, on consideration of any evidence obtained under section 206 or this section, that any person has in his possession any property of the company, the Court may, on the application of the office holder, order that person to deliver the whole or any part of the property to the office holder at such time, in such manner and on such conditions as the Court thinks fit.

(2) If it appears to the Court, on consideration of any evidence so obtained, that any person is indebted to the company, the Court may, on the application of the office holder, order that person to pay to the office holder, at such time and in such manner as the Court may direct, the whole or any

part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

(3) The Court may, if it thinks fit, order that any person, who if within the jurisdiction of the Court would be liable to be summoned to appear before it under section 206 or this section, shall be examined in —

- (a) Brunei Darussalam where he may for the time being be; or
- (b) a place outside Brunei Darussalam.

(4) Any person who appears or is brought before the Court under section 206 or this section may be examined on oath concerning the company or the matters mentioned in section 206(2)(c).

Adjustment of prior transactions (judicial management and liquidation)

Transactions at undervalue

208. (1) This section applies in the case of a company where —

- (a) the company enters judicial management;
- (b) the company goes into liquidation,

and “office holder” means the judicial manager or liquidator, as the case may be.

(2) Where the company has at a relevant time entered into a transaction with any person at an undervalue, the office holder may apply to the Court for an order under this section.

(3) Subject to subsections (4) and (5), the Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 211, a company enters into a transaction with a person at an undervalue if the company —

- (a) makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The Court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied that —

(a) the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) at the time it did so, there were reasonable grounds for believing that the transaction would benefit the company.

Preferences

209. (1) This section applies to section 208.

(2) Where the company has at a relevant time given a preference to any person, the office holder may apply to the Court for an order under this section.

(3) Subject to subsections (4), (5), (6) and (7), the Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) For the purposes of this section and section 211, a company gives a preference to a person if —

(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The Court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).

(6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) The fact that something has been done in pursuance of the order of a Court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Meaning of “relevant time” under sections 208 and 209

210. (1) Subject to subsection (2), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given —

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency as defined in subsection (3);

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency;

(c) in either case, at a time between the making of a judicial management application in respect of the company and the making of a judicial management order on that application; and

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint a judicial manager and the making of that appointment.

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 208 or 209 unless the company —

(a) is at that time unable to pay its debts within the meaning of section 100; or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference,

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of subsection (1), the onset of insolvency is —

(a) in a case where section 208 or 209 applies by reason of a judicial manager of a company being appointed by judicial management order, the date on which the judicial management application is made;

(b) in a case where section 208 or 209 applies by reason of a judicial manager of a company being appointed following filing with the Court of a copy of a notice of intention of the appointment, the date on which the copy of the notice is filed;

(c) in a case where section 208 or 209 applies by reason of a judicial manager of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect; and

(d) in a case where section 208 or 209 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.

Orders under section 208 or 209

211. (1) Without prejudice to the generality of sections 208(3) and 209(3), an order under any of those sections with respect to a transaction or preference entered into or given by a company may, subject to subsection (2) —

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;

(b) require any property to be so vested if it represents in any person's hands the application of the proceeds of sale of property so transferred or of money so transferred;

- (c) release or discharge (in whole or in part) any security given by the company;
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office holder as the Court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the Court thinks fit;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 208 or 209 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order shall not —
- (a) prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
- (b) require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the office holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

(3) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt —

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or, as the case may be, of subsection (2)(b) that the interest was acquired or the benefit was received otherwise than in good faith.

(4) For the purposes of subsection (3)(a), the relevant surrounding circumstances are (as the case may require) —

(a) the fact that the company in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the company in question,

and subsections (5) to (7) apply to determine whether, for those purposes, a person has notice of the relevant proceedings.

(5) Where section 208 or 209 applies by reason of a company's entering judicial management, a person has notice of the relevant proceedings if he has notice that —

(a) a judicial management application has been made;

(b) a judicial management order has been made;

(c) a copy of a notice of intention to appoint a judicial manager has been filed; or

(d) notice of the appointment of a judicial manager has been filed.

(6) Where section 208 or 209 applies by reason of the company going into liquidation at the time when the appointment of a judicial manager of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that —

- (a) a judicial management application has been made;
- (b) a judicial management order has been made;
- (c) a copy of a notice of intention to appoint a judicial manager has been filed;
- (d) notice of the appointment of a judicial manager has been filed; or
- (e) the company has gone into liquidation.

(7) In a case where section 208 or 209 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice —

- (a) where the company goes into liquidation on the making of a winding up order, of the fact that —
 - (i) the petition on which the winding up order is made has been presented; or
 - (ii) the company has gone into liquidation;
- (b) in any other case, of the fact that the company has gone into liquidation.

(8) The provisions of sections 208, 209, 210 and this section apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

Extortionate credit transactions

212. (1) This section applies —

- (a) to section 208; and

(b) where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The Court may, on the application of the office holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the day on which the company entered judicial management or went into liquidation.

(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 the Court thinks fit —

(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 a party to the transaction to pay to the office holder any sums paid to that person, by virtue of the transaction, by the company;

(d) provision requiring any person to surrender to the office holder any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

Avoidance of certain floating charges

213. (1) This section applies to section 206.

(2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of —

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;

(b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and

(c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to subsection (4), the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created —

(a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency;

(b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency;

(c) in either case, at a time between the making of a judicial management application in respect of the company and the making of a judicial management order on that application; or

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint a judicial manager and the making of that appointment.

(4) Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is

not connected with the company, that time is not a relevant time for the purposes of this section unless the company —

- (a) is at that time unable to pay its debts within the meaning of section 100; or
- (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.

(5) For the purposes of subsection (3), the onset of insolvency is —

- (a) in a case where this section applies by reason of a judicial manager of a company being appointed by judicial management order, the date on which the judicial management application is made;
- (b) in a case where this section applies by reason of a judicial manager of a company being appointed following filing with the Court of a copy of notice of intention of the appointment, the date on which the copy of the notice is filed;
- (c) in a case where this section applies by reason of a judicial manager of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect; and
- (d) in a case where this section applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.

(6) For the purposes of subsection (2)(a), the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

Unenforceability of *liens* on books etc.

214. (1) This section applies in the case of a company where —

- (a) the company enters judicial management;

(b) the company goes into liquidation; or

(c) a provisional liquidator is appointed,

and “office holder” means the judicial manager, liquidator or provisional liquidator, as the case may be.

(2) Subject as follows, a *lien* or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office holder.

(3) This does not apply to a *lien* on documents which give a title to property and are held as such.

Remote attendance at meetings

Remote attendance at meetings

215. (1) Subject to subsection (2), this section applies to any meeting of —

(a) the creditors of a company summoned under this Act or the rules; or

(b) the members or contributories of a company summoned by the office holder under this Act or the rules, other than a meeting of the members of a company in a members’ voluntary winding up.

(2) Where the person summoning a meeting (the convener) thinks it fit, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section —

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those

attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when —

- (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (2) shall make whatever arrangements the convener considers appropriate —

(a) to enable those attending the meeting to exercise their rights to speak and vote; and

(b) to ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener —

(a) a meeting will be attended by persons who will not be present together at the same place; and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak and vote.

(7) In making the arrangements referred to in subsection (5) and in forming the opinion referred to in subsection (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting;

(b) the convener is requested in accordance with the rules to specify a place for the meeting; and

(c) that request is made —

(i) in the case of a meeting of creditors or contributories, by not less than 10 *per cent*, in value, of the creditors or contributories; or

(ii) in the case of a meeting of members, by members representing not less than 10 *per cent* of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(9) In this section, “office holder” means —

(a) liquidator, provisional liquidator, judicial manager or receiver of a company; or

(b) where a voluntary arrangement in relation to the company is proposed or has taken effect, the nominee or supervisor of the voluntary arrangement.

Use of websites

Use of websites

216. (1) Subject to subsection (2), where any provision of this Act or the rules requires the office holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website —

(a) in accordance with the rules; and

(b) in such circumstances as may be prescribed.

(2) In this section, “office holder” means —

(a) the liquidator, provisional liquidator, judicial manager or receiver of a company; or

(b) where a voluntary arrangement in relation to a company is proposed or has taken effect, the nominee or supervisor of the voluntary arrangement.

PART 8

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATIONS

Restrictions on unqualified persons acting as liquidators, trustees in bankruptcy etc.

Meaning of “act as insolvency practitioner”

217. (1) A person acts as an insolvency practitioner in relation to a company by acting —

(a) as its liquidator, provisional liquidator, judicial manager or receiver; or

(b) where a voluntary arrangement in relation to the company is proposed or approved, as nominee or supervisor.

(2) In relation to a voluntary arrangement proposed under Part 2, a person acts as nominee if he performs any of the functions conferred on nominees under that Part.

(3) Nothing in this section applies to anything done by the Official Receiver.

(4) In this section, “company” includes a company that may be wound up under Part 6.

Acting without qualification an offence

218. (1) A person who acts as an insolvency practitioner in relation to a company at a time when he is not qualified to do so is guilty of an offence.

(2) This section is to be read subject to section 219.

Authorisation of nominees and supervisors

219. (1) Section 218 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part 2, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of subsection (1), an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if he is a member of a body recognised for the purpose by the Minister.

(3) This subsection applies to a person if—

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;

(b) he lacks capacity to act as nominee or supervisor.

(4) The Minister may by order declare a body which appears to him to fall within subsection (5) to be a recognised body.

(5) A body may be recognised if it maintains and enforces its rules for securing that its members—

(a) are fit and proper persons to act as nominees or supervisors; and

(b) meet prescribed requirements as to education and practical training and experience.

(6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Minister that the body no longer falls within subsection (5).

(8) An order of the Minister under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.

(9) For the purposes of subsection (3)(b), a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether or not such impairment or disturbance is permanent or temporary.

Official Receiver as nominee or supervisor

220. (1) The Official Receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved, provided that the debtor is an undischarged bankrupt when the arrangement is proposed.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order repeal the proviso in subsection (1).

Requisite qualification and means of obtaining it

Persons not qualified to act as insolvency practitioners

221. (1) A person who is not an individual is not qualified to act as an insolvency practitioner.

(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time —

(a) he is authorised so to act by virtue of membership of a professional body recognised under section 222, being permitted so to act by or under its rules; or

(b) he holds an authorisation granted by a competent authority under section 224.

(3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless —

(a) there is in force at that time security for the proper performance of his functions; and

(b) that security meets the prescribed requirements with respect to his so acting in relation to that other person.

(4) A person is not qualified to act as an insolvency practitioner at any time if at that time —

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;

(b) a moratorium period under a debt relief order applies in relation of him;

(c) he lacks capacity to act as an insolvency practitioner.

(5) A person is not qualified to act as an insolvency practitioner while a receiving order is in force in respect of him.

(6) For the purposes of subsection (4)(c), a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether or not such impairment or disturbance is permanent or temporary.

Recognised professional bodies

222. (1) The Minister may by order declare a body which appears to him to fall within subsection (2) to be a recognised professional body for the purposes of this section.

(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces its rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners —

(a) are fit and proper persons so to act; and

(b) meet prescribed requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

(4) The reference in section 221(2) to membership of a professional body recognised under this section is to be read accordingly.

(5) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Minister that the body no longer falls within subsection (2).

(6) An order of the Minister under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

Authorisation by competent authority

223. (1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are —

(a) in relation to a case of any description specified in directions given by the Minister, the body or person so specified in relation to cases of that description; and

(b) in relation to a case not falling within paragraph (a), the Minister.

(3) The application shall —

(a) be made in such manner as the competent authority may direct;

(b) contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application; and

(c) be accompanied by the prescribed fee,

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it, the authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this section by a competent authority other than the Minister may be retained by the authority, and any sums so received by the Minister shall be paid into the Consolidated Fund.

(9) Subsection (3)(c) does not apply in respect of an application made to the Minister.

Grant, refusal and withdrawal of authorisation

224. (1) The competent authority may, on an application made in accordance with section 223 and after being furnished with all such information as it may require under that section, grant or refuse the application.

(2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have, that the applicant —

(a) is a fit and proper person to act as an insolvency practitioner; and

(b) meets the prescribed requirements with respect to education and practical training and experience.

(3) An authorisation granted under this section, if not previously withdrawn, continues in force from the date on which the authorisation or further authorisation takes effect until 31st December for the year in respect of which the authorisation was granted.

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(4) Where an authorisation is granted under this section, the competent authority must, before its expiry (and without a further application made in accordance with section 223) grant a further authorisation under this section taking effect immediately after the expiry of the previous

authorisation, unless it appears to the authority that the subject of the authorisation no longer complies with subsection (2)(a) and (b).

(5) An authorisation granted under this section may be withdrawn by the competent authority if it appears to it that —

- (a) the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner; or
- (b) without prejudice to paragraph (a), the holder —
 - (i) has failed to comply with any provision of this Part or of the rules; or
 - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(6) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

(7) Where an authorisation granted under this section is withdrawn —

- (a) subsection (4) does not require a further authorisation to be granted; or
- (b) if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn.

Notices

225. (1) Where a competent authority grants an authorisation under section 224, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 224(5), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal, the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under section 226 by a person on whom the notice is served.

Right to make representations

226. (1) A person on whom a notice is served under section 225(2) may within 14 days after the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representation so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

PART 9

PUBLIC ADMINISTRATION

Official Receivers

Official Receivers in relation to winding up

227. (1) For the purposes of this Act, in relation to any winding up by the Court, "Official Receiver" means the Official Receiver in bankruptcy.

(2) If in the case of the winding up of any company by the Court, it appears to the Court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the Official Receiver, should be the Official Receiver for the purposes of that winding up, the Court may appoint that other officer to act as Official Receiver in that winding up, and the person so appointed is deemed to be the Official Receiver in that winding up for all the purposes of this Act.

Statement of affairs to be submitted to Official Receiver

228. (1) Where the Court has made a winding up order or has appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form.

(2) The statement as to the affairs of the company shall show —

(a) the particulars of the company's assets, debts, and liabilities;

- (b) the names, addresses, and occupations of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the Official Receiver may require.
- (3) The statement shall be submitted by and be verified by, affidavit of —
- (a) one or more of the persons who are at the relevant date the directors and the person who is at that date the secretary or other chief officer of the company; or
- (b) such of the persons as are mentioned in subsection (4) as the Official Receiver, subject to the direction of the Court, may require to submit and verify the statement.
- (4) The persons referred to in subsection (3)(b) are —
- (a) those who are or have at any time been directors or officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information which he requires;
- (d) those who are or have been within that year officers of, or in the employment of, a company, which is, or within that year was, an officer of the company to which the statement relates.
- (5) The statement shall be submitted within 28 days from the relevant date, or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(6) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(7) Any person who, without reasonable excuse, fails to comply with the requirements of this section is guilty of an offence and liable on conviction to a fine of \$50 for every day or part thereof during which the offence continues.

(8) Any person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(9) Any person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and shall, on application of the liquidator or of the Official Receiver, be punished accordingly.

(10) In this section, “relevant date” means —

(a) in a case where a provisional liquidator is appointed, means the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding up order.

Report by Official Receiver

229. (1) In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 228 or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities;

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

PART 10

EXECUTIVE MANAGER

Appointment of Executive Manager

230. (1) The Minister may, if he considers it expedient in the public interest, appoint any person to be the Executive Manager of any company.

(2) The Executive Manager shall be appointed for such initial period (not to exceed 6 months) as the Minister may specify on making such appointment.

(3) The Minister may extend the appointment of the Executive Manager for such period or periods as he thinks fit.

(4) The Minister may —

(a) remove the Executive Manager;

(b) appoint another person in addition to or in place of the existing Executive Manager; or

(c) make such provision as he thinks fit for the remuneration and indemnification of the Executive Manager.

(5) If the appointment by the Minister has the effect that the office of Executive Manager is to be held by more than one person, the appointment shall declare whether any act required or authorised to be done by the Executive Manager is to be done by all or any one of the persons for the time being holding the office of Executive Manager.

Effect of appointment of Executive Manager

231. (1) On the appointment of an Executive Manager —

(a) any petition for the winding up of the company or for the appointment of a judicial manager shall be dismissed; and

(b) any receiver or manager of all or any part of the property of the company shall vacate office on being required to do so by the Executive Manager.

(2) During the period for which an Executive Manager is in office —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement, conditional sale agreement, chattels leasing agreement or retention of title agreement, except with the consent of the Executive Manager; and

(c) no other legal proceedings (including a petition for a judicial management order) 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 Executive Manager, provided that the Minister may at any time present a petition for a judicial management order.

Duties of Executive Manager

232. (1) The Executive Manager shall —

(a) take into his custody or under his control, the property (wherever situate) to which the company is or appears to be entitled;

(b) investigate the affairs, business and property of the company;

(c) as soon as practicable, report to the Minister the results of his investigation in such manner as the Minister may direct;

(d) as soon as practicable, formulate and present to the Minister his proposals for the future conduct of the affairs, business and property of the company; and

(e) manage the affairs, business and property of the company.

(2) The proposals of the Executive Manager may include (without prejudice to the generality of the foregoing) proposals for —

(a) the removal of the Executive Manager and the return of the company to the control of the directors;

(b) the appointment of a judicial manager;

(c) the winding up of the company.

Powers of Executive Manager

233. (1) The Executive Manager has the power to do all things as may be necessary for —

(a) the management of the affairs, business and property of the company; and

(b) the discharge of his duties.

(2) Without prejudice to the generality of subsection (1), the Executive Manager has —

(a) the powers specified in Schedule 2; and

(b) the power to remove any director of the company and to appoint any person to be a director of the company.

(3) A person dealing with the Executive Manager in good faith and for value is not concerned to inquire whether the Executive Manager is acting within his powers.

(4) The Executive Manager has the power to dispose of any property of the company which is subject to a security, on such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

(5) In exercising his powers and discharging his duties, the Executive Manager —

(a) is deemed to act as the agent of the company;

(b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so; and

(c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except in so far as the contract otherwise provides).

(6) Any sums payable in respect of debts or liabilities of the company incurred while the Executive Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company.

Duty to co-operate with Executive Manager

234. (1) Where an Executive Manager is appointed, it is the duty of each of the persons mentioned in subsection (2) to —

(a) give to the Executive Manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the Executive Manager may require;

(b) attend on the Executive Manager at such time and place as he may require;

(c) otherwise give the Executive Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Executive Manager considers is or may be in possession of information which the Executive Manager believes to be relevant to the exercise of any of his powers.

Investigative powers of Executive Manager

235. (1) The Executive Manager may require to appear before him any person who he thinks is capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, or any other information which the Executive Manager believes to be relevant to the exercise of any of his powers.

(2) The Executive Manager may for the purpose of carrying out his functions or the exercise of any of his powers examine any person on oath, and may administer an oath accordingly.

(3) The Executive Manager may require any person mentioned in section 234(2) to produce any document in his possession or under his control relating to the company or to any of the matters mentioned in section 234(1)(a) and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

(4) If any person —

(a) fails or refuses to comply with his duty under section 234(1)(a) or (c);

(b) fails or refuses to comply with a requirement of the Executive Manager under section 234(1)(b) or this section;

(c) refuses to answer any question put to him by the Executive Manager,

the Executive Manager may certify that fact in writing to the Court, and the Court may —

(i) punish the offender in the like manner as if he had been guilty of contempt of court; or

(ii) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Executive Manager of any document in that person's possession and authorise a person arrested

under such a warrant to be kept in custody until he appears before the Executive Manager.

(5) A *lien* or other right to retain possession of any document of the company is unenforceable to the extent that its enforcement would deny possession of any document to the Executive Manager.

(6) In this section, “document” includes —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information.

PART 11

GENERAL

Monetary limits

236. (1) The Minister may, by order, increase or reduce any of the money sums for the time being specified in the following provisions —

(a) section 100(1)(a);

(b) section 178(1)(a) and (b).

(2) An order under this section may contain such transitional provisions as may appear to the Minister necessary or expedient.

Summary proceedings

237. (1) Summary proceedings for any offence under any of Parts 1 to 7 may be taken against a body corporate at any place at which the body corporate has a place of business, and against any other person at any place at which he is for the time being.

(2) An information relating to such an offence which is triable by a Court of a Magistrate may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on

which evidence sufficient in the opinion of the Public Prosecutor or Minister, as the case may be, to justify the proceedings comes to his knowledge.

(3) For the purposes of this section, a certificate of the Public Prosecutor or Minister, as the case may be, as to the date on which such evidence as is mentioned in subsection (2) came to his knowledge is conclusive evidence.

Offences by bodies corporate

238. (1) Where a body corporate is guilty of an offence to which this section applies and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Admissibility in evidence of statements of affairs etc.

239. (1) In any proceedings (whether or not under this Act) —

(a) a statement of affairs prepared for the purposes of any provision of this Act;

(b) a statement made in pursuance of a requirement imposed by or under the Banking Order, 2006 (S 45/2006) or the Islamic Banking Order, 2008 (S 96/2008);

(c) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under the rules,

may be used in evidence against any person making or concurring in making the statement.

(2) In criminal proceedings in which any such person is charged with an offence to which this subsection applies —

(a) no evidence relating to the statement may be adduced; and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

References to things in writing

240. (1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions —

- (a) section 92(2);
- (b) section 100(1);
- (c) section 194(1); and
- (d) section 195.

Right of creditor to access information

241. A creditor of a company shall have the right to access information about insolvency proceedings relating to the company, either by requesting it from an insolvency practitioner or by reviewing the official records, including financial records of the company.

[S 47/2017]

General penalty

242. Any person who contravenes or fails to comply with any provision of this Act or any rules made thereunder or any direction given or requirement imposed thereunder is guilty of an offence, and if no penalty is provided for an offence against this Act or any rules made thereunder, be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

[S 47/2017]

Jurisdiction of Courts of Magistrates

243. A Court of a Magistrate shall have jurisdiction to hear and determine all offences against this Act and any rules made thereunder and, notwithstanding anything to the contrary in any other written law, shall have

power to impose the full penalty or punishment in respect of any such offence.

[S 47/2017]

Amendment of Schedules

244. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, amend the Schedules to this Act.

Rules

245. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as he considers necessary or expedient for giving effect to and carrying out the purposes and provisions of this Act, including the prescription of fees or of any other thing required to be or which may be prescribed under this Act, and for the due administration thereof.

(2) Such rules may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

SCHEDULE 1

(sections 9(2), 13(6), 18(1) and 19)

MORATORIUM WHERE DIRECTORS PROPOSE
VOLUNTARY ARRANGEMENT

PART 1

INTRODUCTION

Interpretation

1. In this Schedule —

“beginning of the moratorium” has the meaning assigned to it in paragraph 19(1);

“date of filing” means the date on which the documents for the time being referred to in paragraph 18(1) are filed with the Court;

“hire-purchase agreement” includes a conditional sale agreement, a chattels leasing agreement and a retention of title agreement;

“moratorium” means a moratorium under section 9;

“nominee” includes any person for the time being carrying out the functions of a nominee under this Schedule.

Eligible companies

2. (1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless —

(a) it is excluded from being eligible by virtue of paragraph 4; or

(b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if —

(a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 22 of the Securities Markets Order, 2013 (S 59/2013), in relation to that activity;

SCHEDULE 1 — (*continued*)

(b) it has permission under the Securities Markets Order, 2013 (S 59/2013) to accept deposits;

(c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Order, 2006 (S 45/2006); or

(d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge.

(3) Paragraphs (2)(1)(a), (b) and (c) must be read with Part II of the Schedule to the Securities Markets Order, 2013 (S 59/2013).

3. (1) A company meets the requirements of this paragraph if the qualifying conditions are met —

(a) in the year ending with the date of filing; or

(b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1), a company's financial year is to be determined in accordance with the Companies Act (Chapter 39).

4. (1) A company is excluded from being eligible for a moratorium if, on the date of filing —

(a) the company is in judicial management;

(b) the company is being wound up;

(c) there is a judicial manager of the company;

(d) a voluntary arrangement has effect in relation to the company;

(e) there is a provisional liquidator of the company;

(f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and —

(i) no voluntary arrangement had effect at the time at which the moratorium came to an end; or

SCHEDULE 1 — (*continued*)

(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely; or

(g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under section 8 has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 14(4)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company that, by reason of a winding up order made after the date of filing, is treated as being wound up on that date.

Capital market arrangement

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement that is or forms part of a capital market arrangement under which —

(a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least \$20,000,000 under the arrangement; and

(b) the arrangement involves the issue of a capital market investment.

Public-private partnership

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which —

(a) is a public-private partnership project; and

(b) includes step-in rights.

Liability under arrangement

7. (1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of \$20,000,000 or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

SCHEDULE 1 — (*continued*)

- (3) In this paragraph, the reference to “liability” includes —
- (a) a present or future liability whether, in either case, it is certain or contingent;
 - (b) a reference to a liability to be paid wholly or partly in foreign currency (in which case the Brunei dollar equivalent shall be calculated as at the time when the liability is incurred).

Interpretation of capital market arrangement

8. (1) For the purposes of paragraph 5, an arrangement is a capital market arrangement if —
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement;
 - (b) at least one party guarantees the performance of obligations of another party;
 - (c) at least one party provides security in respect of the performance of obligations of another party; or
 - (d) the arrangement involves an investment of a kind described in the Securities Markets Order, 2013 (S 59/2013).

- (2) For the purposes of sub-paragraph (1) —
- (a) a reference to holding as trustee includes a reference to holding as nominee or agent;
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment; and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.

SCHEDULE 1 — (*continued*)

- (3) In paragraphs 5, 7, 14 and this paragraph —
- “agreement” includes an agreement or undertaking effected by —
- (a) contract;
 - (b) deed; or
 - (c) any other instrument intended to have effect in accordance with the laws of Brunei Darussalam or another jurisdiction;
- “party” to an arrangement includes a party to an agreement which —
- (a) forms part of the arrangement;
 - (b) provides for the raising of finance as part of the arrangement; or
 - (c) is necessary for the purposes of implementing the arrangement.

Capital market investment

9. (1) For the purposes of paragraphs 5 and 8, an investment is a capital market investment if —

- (a) it is within Part II of the Schedule to the Securities Markets Order, 2013 (S 59/2013); and
- (b) it is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1) —

“listed”, in relation to a security or a company, means such security or company whose securities or any class of its securities having gained admission to be quoted on a market operator;

“rated” means rated for the purposes of investment by an internationally recognised rating agency;

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

SCHEDULE 1 — (*continued*)

10. For the purposes of paragraphs 5 and 8, an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following —

(a) an investment professional within the meaning of the Securities Markets Order, 2013 (S 59/2013);

(b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual within the meaning of section 20 of the Securities Markets Order, 2013 (S 59/2013);

(c) a person to whom section 20 of the Securities Markets Order, 2013 (S 59/2013) applies;

(d) a person in a country or territory other than Brunei Darussalam who under the law of that country or territory is not prohibited from investing in bonds or commercial paper.

Debt

11. The debt of at least \$20,000,000 referred to in paragraph 5 —

(a) may be incurred at any time during the life of the capital market arrangement; and

(b) may be expressed wholly or partly in a foreign currency (in which case the Brunei dollar equivalent shall be calculated as at the time when the arrangement is entered into).

Interpretation of project company

12. (1) For the purposes of paragraph 6, a company is a project company of a project if —

(a) it holds property for the purpose of the project;

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;

(c) it is one of a number of companies which together carry out the project;

SCHEDULE 1 — (*continued*)

(d) it has the purpose of supplying finance to enable the project to be carried out; or

(e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) A company is not a project company of a project if —

(a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e); but

(b) it also performs a function which is not —

(i) within sub-paragraph (1)(a) to (d);

(ii) related to a function within sub-paragraph (1)(a) to (d); or

(iii) related to the project.

(3) For the purposes of this paragraph, a company carries out all or part of a project whether or not it acts wholly or partly through agents.

Public-private partnership project

13. (1) In paragraph 6, “public-private partnership project” means a project —

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons; or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(2) In sub-paragraph (1), “resources” includes —

(a) funds (including payment for the provision of services or facilities);

(b) assets;

(c) professional skill;

(d) the grant of a concession or franchise; and

SCHEDULE 1 — (*continued*)

(e) any other commercial resource.

(3) In sub-paragraph (1), “public body” means —

(a) a body which exercises public functions;

(b) a body specified for the purposes of this paragraph by the Minister; and

(c) a body within a class specified for the purposes of this paragraph by the Minister.

(4) A specification under sub-paragraph (3) may be —

(a) general; or

(b) for the purpose of the application of paragraph 6, to a specified case.

Step-in rights

14. (1) For the purposes of paragraph 6, a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement to —

(a) assume sole or principal responsibility under an agreement for carrying out all or part of the project; or

(b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1), a reference to the provision of finance includes a reference to the provision of an indemnity.

Person

15. For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to any company or association or body of persons, corporate or unincorporated.

16. The Minister may, by rules, modify the qualifications for eligibility of a company for a moratorium.

SCHEDULE 1 — (*continued*)

PART 2

OBTAINING MORATORIUM

Nominee's statement

17. (1) Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee —

(a) a document setting out the terms of the proposed voluntary arrangement;

(b) a statement as to the affairs of the company containing —

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed; and

(ii) such other information as may be prescribed; and

(c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion —

(a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented;

(b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and

(c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

SCHEDULE 1 — (*continued*)*Documents to be submitted to Court*

18. (1) To obtain a moratorium, the directors of a company must file with the Court —

(a) a document setting out the terms of the proposed voluntary arrangement;

(b) a statement as to the affairs of the company containing —

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed; and

(ii) such other information as may be prescribed;

(c) a statement that the company is eligible for a moratorium;

(d) a statement from the nominee that he has given his consent to act; and

(e) a statement from the nominee that, in his opinion —

(i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented;

(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and

(iii) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

(4) The Minister may, by rules, modify the requirements of this paragraph that require documents to be filed with the Court in order to obtain a moratorium.

SCHEDULE 1 — (*continued*)*Duration of moratorium*

19. (1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed with the Court and references in this Schedule to “the beginning of the moratorium” shall be construed accordingly.

(2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.

(3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 42.

(4) If the nominee fails to summon either meeting within the period required by paragraph 39(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 42, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of —

(a) paragraph 35(4);

(b) an order under paragraph 36(4), 37(4)(d) or 50(5)(d); or

(c) a decision of one or both of the meetings summoned under paragraph 39(1).

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Minister may by order increase or reduce the period for the time being specified in sub-paragraph (3).

SCHEDULE 1 — (*continued*)*Notification of beginning of moratorium*

20. (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2) If the directors, without reasonable excuse, fail to comply with sub-paragraph (1), each of them is guilty of an offence.

21. (1) When a moratorium comes into force, the nominee shall, in accordance with the rules —

(a) forthwith advertise that fact; and

(b) notify the Registrar, company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) If the nominee, without reasonable excuse, fails to comply with sub-paragraph (1)(a) or (b), he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(3) In sub-paragraph (1)(b), “petitioning creditor” means a creditor by whom a winding up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

Notification of end of moratorium

22. (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules —

(a) forthwith advertise that fact; and

(b) notify the Court, Registrar, company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee, without reasonable excuse, fails to comply with sub-paragraph (1)(a) or (b), he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

SCHEDULE 1 — (*continued*)

PART 3

EFFECTS OF MORATORIUM

Effect on creditors etc.

23. (1) During the period for which a moratorium is in force for a company —
- (a) no petition may be presented for the winding up of the company;
 - (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the Court and subject (where the Court gives leave) to such conditions as the Court may impose;
 - (c) no resolution may be passed or order made for the winding up of the company;
 - (d) no judicial management application may be made in respect of the company;
 - (e) no receiver of the company may be appointed;
 - (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with leave of the Court and subject to such conditions as the Court may impose;
 - (g) no other steps may be taken to enforce any security over the property of the company, or to repossess goods in the company's possession under any hire-purchase agreement, except with leave of the Court and subject to such conditions as the Court may impose; and
 - (h) 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 leave of the Court and subject to such conditions as the Court may impose.
- (2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, section 105 does not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

SCHEDULE 1 — (*continued*)

(3) Sub-paragraph (1)(a) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, sub-paragraph (1)(b) and (c) do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, “excepted petition” means a petition under section 102.

24. (1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then —

(a) the event shall not have the effect in question at that time; but

(b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

(4) The effect referred to in sub-paragraphs (2) and (3) is —

(a) causing the crystallisation of the floating charge; or

(b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

(5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining —

(a) the crystallisation of the floating charge; or

(b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

SCHEDULE 1 — (*continued*)

25. Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Effect on company

26. (1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.

(2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not make the transaction —

(a) void; or

(b) to any extent, unenforceable by or against the company.

Company invoices etc.

27. (1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, must also contain the nominee's name and a statement that the moratorium is in force for the company.

(2) If default is made in complying with sub-paragraph (1), the company and, subject to sub-paragraph (3), any officer of the company is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Obtaining credit during moratorium

28. (1) The company may not obtain credit to the extent of \$500 or more from a person who has not been informed that a moratorium is in force in relation to the company.

SCHEDULE 1 — (*continued*)

(2) The reference to the company obtaining credit includes the following cases —

(a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement; and

(b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1) —

(a) the company is guilty of an offence and liable on conviction to a fine not exceeding \$5,000; and

(b) if any officer of the company knowingly and wilfully authorises or permits the contravention, he is guilty of an offence.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 236.

Disposals and payments

29. (1) Subject to sub-paragraph (2), the company may only dispose of any of its property if —

(a) there are reasonable grounds for believing that the disposal will benefit the company; and

(b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.

(3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the Court —

(a) the company is guilty of an offence and liable on conviction to a fine not exceeding \$5,000; and

SCHEDULE 1 — (*continued*)

- (b) if any officer of the company authorises or permits the contravention, without reasonable excuse, he is guilty of an offence.
30. (1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if —
- (a) there are reasonable grounds for believing that the payment will benefit the company; and
- (b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the Court —
- (a) the company is guilty of an offence and liable on conviction to a fine not exceeding \$5,000; and
- (b) if any officer of the company authorises or permits the contravention, without reasonable excuse, he is guilty of an offence.
- Disposal of charged property etc.*
31. (1) This paragraph applies where —
- (a) any property of the company is subject to a security; or
- (b) any goods are in the possession of the company under a hire-purchase agreement.
- (2) If the holder of the security consents, or the Court gives leave, the company may dispose of the property as if it were not subject to the security.
- (3) If the owner of the goods consents, or the Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

SCHEDULE 1 — (*continued*)

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), 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) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of —

(a) any property subject to a security other than a security which, as created, was a floating charge; or

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

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that —

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be agreed, or determined by the Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, 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.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires —

(a) the net proceeds of the disposal; and

(b) where sub-paragraph (6)(b) applies, the sums mentioned in that sub-paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send a copy of the order giving leave to the Registrar.

SCHEDULE 1 — (*continued*)

(9) If the directors, without reasonable excuse, fail to comply with sub-paragraph (8), they are guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

32. (1) If the company —

(a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security;

(b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement; or

(c) fails to comply with any requirement imposed by paragraph 31,

it is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is guilty of an offence.

Market contracts etc.

33. (1) If the company enters into any transaction to which this paragraph applies —

(a) the company is guilty of an offence and liable on conviction to a fine not exceeding \$5,000; and

(b) if any officer of the company, without reasonable excuse, authorises or permits the company to enter into the transaction, he is guilty of an offence.

(2) A company enters into a transaction to which this paragraph applies if it —

(a) enters into a market contract;

(b) gives a transfer order;

(c) grants a market charge or a system-charge; or

(d) provides any collateral security.

SCHEDULE 1 — (*continued*)

(3) The fact that a company enters into a transaction in contravention of this paragraph does not make the transaction —

(a) void; or

(b) to any extent, unenforceable by or against the company.

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.

(5) Paragraph 31 does not apply in relation to any property that is subject to a market charge, system-charge or collateral security charge.

PART 4

NOMINEES

Monitoring of company's activities

34. (1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether —

(a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented; and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

SCHEDULE 1 — (*continued*)*Withdrawal of consent to act*

35. (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium —

(a) he forms the opinion that —

- (i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented; or
- (ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium; or

(c) the directors fail to comply with their duty under paragraph 34(2).

(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the Court, Registrar, company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee, without reasonable excuse, fails to comply with sub-paragraph (5), he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

SCHEDULE 1 — (*continued*)*Challenge of nominee's actions etc.*

36. (1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1), the Court may —

- (a) confirm, reverse or modify any act or decision of the nominee;
- (b) give him directions; or
- (c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may, among other things, bring the moratorium to an end and make such consequential provision as the Court thinks fit.

37. (1) Where there are reasonable grounds for believing that —

- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss; but
- (b) the company does not intend to pursue any claim it may have against the nominee,

any creditor of the company may apply to the Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1), the Court may —

- (a) order the company to pursue any claim against the nominee;
- (b) authorise any creditor to pursue such a claim in the name of the company; or
- (c) make such other order with respect to such a claim as it thinks fit,

SCHEDULE 1 — (*continued*)

unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

- (4) An order under sub-paragraph (3) may (among other things) —
 - (a) impose conditions on any authority given to pursue a claim;
 - (b) direct the company to assist in the pursuit of a claim;
 - (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim;
 - (d) bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (5) On an application under sub-paragraph (1), the Court shall have regard to the interests of the members and creditors of the company generally.

Replacement of nominee by Court

38. (1) The Court may —
 - (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died; or
 - (b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the Court a statement indicating his consent to act.

SCHEDULE 1 — (*continued*)

PART 5

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

39. (1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.

(2) The persons to be summoned to a meeting of the company's creditors under this paragraph are every creditor of the company of whose claim the nominee is aware.

Conduct of meetings

40. (1) Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

Approval of voluntary arrangement

41. (1) The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions that are proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 8.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification that affects the right of a secured creditor of the company to enforce his

SCHEDULE 1 — (*continued*)

security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which —

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or any of them) summoned under paragraph 39 being held, give notice to the nominee of any modification of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 147.

Extension of moratorium

42. (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned or further adjourned, may resolve that the moratorium be extended or further extended, with or without conditions.

(2) The moratorium may not be extended or further extended, to a day later than the end of the period of 2 months which begins —

(a) where both meetings summoned under paragraph 39 are first held on the same day, with that day;

(b) in any other case, with the day on which the later of those meetings is first held.

SCHEDULE 1 — (*continued*)

(3) At any meeting where it is proposed to extend or further extend the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting of —

(a) what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company; and

(b) what he intends to do to continue to comply with that duty if the moratorium is extended or further extended and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended or further extended be brought to an end before the end of the period of the extension or further extension.

(7) The Minister may by order increase or reduce the period for the time being specified in sub-paragraph (2).

43. (1) The conditions which may be imposed when a moratorium is extended or further extended include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the Court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium —

(a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee; and

(b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

SCHEDULE 1 — (*continued*)

44. (1) If a decision to extend or further extend the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the Registrar and the Court.

(2) If the moratorium is extended or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send a copy of the order to the Registrar.

(3) If the nominee, without reasonable excuse, fails to comply with this paragraph, he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Moratorium committee

45. (1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended or further extended may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) The nominee shall reimburse any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions.

(4) The committee shall cease to exist when the moratorium comes to an end.

Effectiveness of decisions

46. (1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to —

- (a) the approval of a proposed voluntary arrangement;
- (b) the extension (or further extension) of a moratorium;
- (c) the bringing of a moratorium to an end;
- (d) the establishment of a committee; or
- (e) the approval of the expected cost of a nominee's intended actions.

SCHEDULE 1 — (*continued*)

- (2) The decision has effect if, in accordance with the rules —
- (a) it has been taken by both meetings summoned under paragraph 39; or
 - (b) subject to any order made under sub-paragraph (5), it has been taken by the creditors' meeting summoned under that paragraph.
- (3) If a decision taken by the meeting of the company's creditors under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the Court.
- (4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with —
- (a) the day on which the decision was taken by the meeting of the company's creditors; or
 - (b) where the decision of the company meeting was taken on a later day, that day.
- (5) On an application under sub-paragraph (3), the Court may —
- (a) order the decision of the company meeting to have effect instead of the decision of the meeting of the company's creditors; or
 - (b) make such other order as it thinks fit.

Effect of approval of voluntary arrangement

47. (1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

- (2) The approved voluntary arrangement —
- (a) takes effect as if made by the company at the meeting of the company's creditors; and

SCHEDULE 1 — (*continued*)

- (b) binds every person who in accordance with the rules —
- (i) was entitled to vote at that meeting whether or not he was present or represented at it; or
 - (ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If —

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid; and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23(4), was presented before the beginning of the moratorium, the Court shall dismiss the petition.

(5) The Court shall not dismiss a petition under sub-paragraph (4) —

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the Court; or

(b) at any time when an application under paragraph 48 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Challenge of decisions

48. (1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the Court on one or both of the following grounds —

(a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company;

SCHEDULE 1 — (*continued*)

(b) that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are —

(a) a person entitled, in accordance with the rules, to vote at any of the meetings;

(b) a person who would have been entitled, in accordance with the rules, to vote at the meeting of the company's creditors if he had had notice of it; and

(c) the nominee.

(3) An application under this paragraph shall not be made —

(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the Court; or

(b) in the case of a person who was not given notice of the meeting of the company's creditors, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the Court is satisfied as to any of the grounds mentioned in sub-paragraph (1), it may do any of the following —

(a) revoke or suspend —

(i) any decision approving the voluntary arrangement which has effect under paragraph 46; or

(ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph;

(b) give a direction to any person —

(i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make; or

SCHEDULE 1 — (*continued*)

- (ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) meeting of the company's creditors to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement that has effect under paragraph 46.

(6) Where the Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the Court, on an application under this paragraph —

- (a) gives a direction under sub-paragraph (4)(b); or
- (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to —

- (a) things done under the voluntary arrangement since it took effect; and
- (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

Implementation of voluntary arrangement

49. (1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred —

- (a) by virtue of the approval of the arrangement, on the nominee; or
- (b) by virtue of paragraph 41(2), on a person other than the nominee,

SCHEDULE 1 — (*continued*)

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court.

(4) On an application under sub-paragraph (3), the Court may —

- (a) confirm, reverse or modify any act or decision of the supervisor;
- (b) give him directions; or
- (c) make such other order as it thinks fit.

(5) The supervisor —

(a) may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement; and

(b) is included among the persons who may apply to the Court for the winding up of the company or for a judicial management order to be made in relation to it.

(6) The Court may, whenever —

(a) it is expedient to appoint a person to carry out the functions of the supervisor; and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

SCHEDULE 1 — (*continued*)

PART 6

GENERAL

Challenge of directors' actions

50. (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the Court for an order under this paragraph on the ground that —

(a) the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner); or

(b) any actual or proposed act or omission of the directors is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph, the Court may —

(a) make such order as it thinks fit for giving relief in respect of the matters complained of;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular —

(a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium;

(b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do;

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct;

SCHEDULE 1 — (*continued*)

(d) bring the moratorium to an end and make such consequential provision as the Court thinks fit.

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

(7) Sub-paragraph (8) applies where —

(a) the appointment of a judicial manager has effect in relation to the company and that appointment was in pursuance of —

- (i) a judicial management application made; or
- (ii) a notice of intention to appoint filed;

before the moratorium came into force; or

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the judicial manager or, as the case may be, the liquidator.

Offences

51. (1) This paragraph applies where a moratorium has been obtained for a company.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company —

(a) did any of the things mentioned in sub-paragraph (4)(a) to (f); or

(b) was privy to the doing by others of any of the things mentioned in sub-paragraph (4)(c), (d) and (e),

he is to be treated as having committed an offence at that time.

SCHEDULE 1 — (*continued*)

(3) If, at any time during the moratorium, a person who is an officer of the company —

(a) does any of the things mentioned in sub-paragraph (4)(a) to (f); or

(b) is privy to the doing by others of any of the things mentioned in sub-paragraph (4)(c), (d) and (e),

he is guilty of an offence.

(4) The things referred to in sub-paragraphs (2) and (3) are —

(a) concealing any part of the property of the company to the value of \$200 or more, or concealing any debt due to or from the company;

(b) fraudulently removing any part of the property of the company to the value of \$200 or more;

(c) concealing, destroying, mutilating or falsifying any book and paper affecting or relating to the property or affairs of the company;

(d) making any false entry in any book and paper affecting or relating to the property or affairs of the company;

(e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs; or

(f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(5) It is a defence for —

(a) a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in sub-paragraph (4)(a) or (f) to prove that he had no intent to defraud; and

(b) a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in sub-paragraph 4(c) or (d) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

SCHEDULE 1 — (*continued*)

(6) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which —

(a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2); or

(b) amount to an offence under sub-paragraph (3),

is guilty of an offence.

(7) The money sums specified in sub-paragraph (4)(a) and (b) are subject to increase or reduction by order under section 236.

52. (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company —

(a) makes any false representation; or

(b) fraudulently does, or omits to do, anything,

he is guilty an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

Void provisions in floating charge documents

53. (1) A provision in an instrument creating a floating charge is void if it provides for —

(a) obtaining a moratorium; or

(b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

SCHEDULE 1 — (*continued*)

(2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

Functions of Brunei Darussalam Central Bank

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54. (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the Court for leave under paragraph 31(2) or (3).

(4) Where the provisions of the paragraphs mentioned in sub-paragraph (5) apply, the persons who may apply to the Court under those provisions shall include the Authority.

(5) The paragraphs referred to in sub-paragraph (4) are —

(a) paragraph 36(1);

(b) paragraph 37(1);

(c) paragraph 48(1);

(d) paragraph 49(3);

(e) paragraph 50(2).

(6) If a person other than the Authority applies to the Court under that paragraph, the Authority is entitled to be heard on the application.

(7) The Authority is entitled to be heard on any application under paragraph 46(3).

(8) The persons to be summoned to a meeting of a company’s creditors under paragraph 39 shall include the Authority.

SCHEDULE 1 — (*continued*)

(9) A person appointed for the purpose mentioned in sub-paragraph (8) by the Authority is entitled to attend and participate in (but not to vote at) —

(a) any meeting of the company's creditors summoned under that paragraph;

(b) any meeting of a committee established under paragraph 45.

(10) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(11) In this paragraph —

“Authority” means the Brunei Darussalam Central Bank established by section 3(1) of the Brunei Darussalam Central Bank Order, 2010 (S 103/2010);

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“regulated company” means a company which —

(a) is, or has been, an authorised person regulated under the provisions of the Securities Markets Order, 2013 (S 59/2013);

(b) is, or has been, an appointed representative within the meaning given by the provisions of the Securities Markets Order, 2013 (S 59/2013); or

(c) is carrying on, or has carried on, a regulated activity, within the meaning given by Part II of the Schedule to the Securities Markets Order, 2013 (S 59/2013), in contravention of the general prohibition within the meaning of section 22 of the Securities Markets Order, 2013 (S 59/2013).

SCHEDULE 2

(sections 38(4) and 233(2)(a))

**POWERS OF SUPERVISOR, JUDICIAL MANAGER AND
EXECUTIVE MANAGER**

1. Take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as he thinks expedient.
2. Sell or otherwise dispose of the property of the company by public auction or private contract.
3. Raise or borrow money and grant security therefor over the property of the company.
4. Obtain unsecured credit and incur unsecured debt in the ordinary course of business as an administrative expenditure.
5. Assume, reject or terminate any contract that has not been fully executed or unexpired lease of the debtor, but subject to the approval of the Court.
6. Sell all or any substantial part of the property of the company, subject to or free of any *lien*, or distribute proceeds of such sale among creditors, but approval of the creditors is required for the sale and distribution.
7. Appoint a solicitor or accountant or other professionally qualified person in Brunei Darussalam or elsewhere to assist him in the performance of his functions.
8. Bring or defend any action or other legal proceedings (including proceedings directed at seeking the assistance of a court outside Brunei Darussalam) in Brunei Darussalam or elsewhere in the name and on behalf of the company or in his own name.
9. Refer to arbitration any question affecting the company.
10. Effect and maintain insurances in respect of the business and property of the company.
11. Use the seal of the company.
12. Do all acts and execute in the name and on behalf of the company any deed, receipt or other document.

SCHEDULE 2 — (*continued*)

13. Draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
14. Appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and employ and dismiss employees.
15. Do all such things (including the carrying out of works) as may be necessary or desirable for the protection, preservation or realisation of the property of the company, wherever the property is situated.
16. Make any payment that is necessary or incidental to the performance of his functions.
17. Carry on the business of the company.
18. Establish subsidiaries of the company.
19. Transfer to subsidiaries of the company the whole or any part of the business and property of the company.
20. Grant or accept a surrender of a lease or tenancy of any of the property of the company, and take a lease or tenancy of any property required or convenient for the business of the company.
21. Make any arrangement or compromise on behalf of the company.
22. Call up any uncalled capital of the company.
23. Rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and accede to trust deeds for the creditors of any such person.
24. Present or defend a petition for the winding up of the company.
25. Change the location of the registered office of the company.
26. Do all other things incidental to the exercise of the powers mentioned in paragraphs 1 to 24.

SCHEDULE 3

(sections 137(2) and (3) and 139(1))

POWERS OF LIQUIDATOR IN WINDING UP

PART 1

POWERS EXERCISABLE WITH SANCTION

1. Pay any class of creditors in full.
2. Make any arrangement or compromise with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

PART 2

**POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP
AND IN WINDING UP BY COURT**

3. Bring or defend any action or other legal proceedings in the name and on behalf of the company.
4. Carry on the business of the company so far as may be necessary for its beneficial winding up.

PART 3

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

5. Sell any of the property of the company by public auction or private contract and transfer the whole of it to any person or to sell the same in parcels.
6. Compromise, on such terms as may be agreed —
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company; and

SCHEDULE 3 — (*continued*)

(b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

7. Do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the seal of the company.

8. Prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9. Draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

10. Raise on the security of the assets of the company any money requisite.

11. Take out, in his official name, letters of administration to any deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

In all such cases, the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12. Appoint an agent to do any business that the liquidator is unable to do himself.

13. Do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.