

INSOLVENCY REGULATIONS 2022

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Regulations relating to company insolvency and winding-up (including the winding-up of companies that are not insolvent) and related matters, including the functions and qualifications of insolvency practitioners, the public administration of insolvency, the penalisation and redress of malpractice and wrongdoing, and the avoidance of certain transactions at an undervalue.

Date of enactment: 29 August 2022

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:-

PART 1 : ADMINISTRATION

Chapter 1 - Nature of Administration

1. Administration

- (1) For the purposes of these Regulations, “**administrator**” of a Company means a person appointed under this Part 1 (*Administration*) to manage the Company’s affairs, business and property and “**administrator**” of a Deed of Company Arrangement means a person appointed under this Part 1 (*Administration*) to act as the administrator of a Deed of Company Arrangement.
- (2) For the purposes of this Part 1 (*Administration*)—
 - (a) a Company is “**in administration**” while the appointment of an administrator of the Company has effect;
 - (b) a Company “**enters administration**” when the appointment of an administrator of the Company takes effect;
 - (c) a Company ceases to be in administration when the appointment of an administrator of the Company ceases to have effect in accordance with this Part 1 (*Administration*); and
 - (d) a Company does not cease to be in administration merely because an administrator of the Company vacates office (by reason of resignation, death or otherwise) or is removed from office.
- (3) A person may be appointed as administrator of a Company—
 - (a) by administration order of the Court under Section 6 (*Administration order*);
 - (b) by the holder of a qualifying charge under Section 21 (*Power to appoint*); or
 - (c) by the Company or its Directors under Section 29 (*Power to appoint*).

2. Purpose of administration

- (1) The administrator of a Company must perform his functions with the objective of—
 - (a) rescuing the Company as a going concern;
 - (b) achieving a better result for the Company’s creditors as a whole than would be likely if the Company were wound up (without first being in administration); or
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to subsection (4), the administrator of a Company must perform his functions in the interests of the Company’s creditors as a whole.
- (3) The administrator of a Company must perform his functions with the objective specified in subsection (1)(a) unless he thinks either—
 - (a) that it is not reasonably practicable to achieve that objective; or
 - (b) that the objective specified in subsection (1)(b) would achieve a better result for the Company’s creditors as a whole.

- (4) The administrator of a Company may perform his functions with the objective specified in subsection (1)(c) only if—
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in subsection (1)(a) and (b); and
 - (b) he does not unnecessarily harm the interests of the creditors of the Company as a whole.

3. Administrator

The administrator of a Company must perform his functions as quickly and efficiently as is reasonably practicable.

4. Status of administrators

An administrator of a Company and an administrator of a Deed of Company Arrangement is an officer of the Court (whether or not he is appointed by the Court).

5. General restrictions

- (1) A person may be appointed as administrator of a Company or an administrator of a Deed of Company Arrangement only if he is an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).
- (2) A person may not be appointed as administrator of a Company which is in administration (subject to the provisions of Chapter 11 (*Replacing Administrator*) of Part 1 (*Administration*) about replacement and additional administrators).
- (3) A person may not be appointed as administrator of a Company which is in liquidation by virtue of—
 - (a) a resolution for voluntary winding-up; or
 - (b) a winding-up order.
- (4) Subsection (3)(a) is subject to Section 39(4) and (5) (*Application where Company in liquidation*).
- (5) Subsection (3)(b) is subject to Section 39 (*Application where Company in liquidation*).

Chapter 2 - Appointment of Administrator by Court

6. Administration order

An administration order is an order appointing a person as the administrator of a Company.

7. Conditions for making order

The Court may make an administration order in relation to a Company only if satisfied—

- (a) that the Company is or is likely to become unable to pay its debts; and
- (b) that the administration order is reasonably likely to achieve the purpose of administration.

8. Administration application

- (1) An application to the Court for an administration order in respect of a Company (an **“administration application”**) may be made only by—
 - (a) the Company;
 - (b) the Directors of the Company;
 - (c) one or more creditors of the Company; or
 - (d) a combination of persons listed in paragraphs (a) to (c).
- (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—
 - (a) any person who has appointed an administrative receiver of the Company;
 - (b) any person who is or may be entitled to appoint an administrative receiver of the Company;
 - (c) any person who is or may be entitled to appoint an administrator of the Company under Section 21 (*Power to appoint*);
 - (d) if an administrative receiver has been appointed, on him;
 - (e) if there is pending a petition for the winding-up of the Company, on the petitioner (and also on the provisional liquidator, if any);
 - (f) on the person proposed as administrator of the Company; and
 - (g) on the Company, if the application is made by anyone other than the Company.
- (3) An administration application may not be withdrawn without the permission of the Court.
- (4) In subsection (1) **“creditor”** includes a contingent creditor and a prospective creditor.

9. Witness statement in support of administration application

- (1) Where it is proposed to apply to the Court for an administration order to be made in relation to a Company, the administration application shall be in the prescribed form and a witness statement complying with Section 11 (*Content of administration application and witness statement*) must be prepared with a view to its being filed with the Court in support of the administration application.
- (2) If the administration application is to be made by the Company or by the Directors, the witness statement shall be made by one of the Directors, or the secretary of the Company, stating himself to make it on behalf of the Company or, as the case may be, on behalf of the Directors.
- (3) If the administration application is to be made by creditors, the witness statement shall be made by a person acting under the authority of them all, whether or not himself one of their number. In any case, there must be stated in the witness statement the nature of his authority and the means of his knowledge of the matters to which the witness statement relates.

10. Form of administration application

- (1) If made by the Company or by the Directors, the administration application shall state the name of the Company and its address for service, which (in the absence of special reasons to the contrary) is that of the Company's registered office.
- (2) If the administration application is made by the Directors, it shall state that it is so made under Section 8(1)(b) (*Administration application*); but from and after making it, it is to be treated for all purposes as the administration application of the Company.
- (3) If made by a single creditor, the administration application shall state his name and address for service.
- (4) If the administration application is made by two or more creditors, it shall state that it is so made (naming them); but from and after making it, it is to be treated for all purposes as the administration application of only one of them, named in the administration application as applying on behalf of himself and other creditors. An address for service for that one shall be specified.
- (5) There shall be attached to the administration application a written statement containing the information prescribed in paragraph 46 of Schedule 1 by each of the persons proposed to be administrator of a Company stating—
 - (a) that he consents to accept appointment;
 - (b) details of any prior professional relationship(s) that he has had with the Company to which he is to be appointed as administrator; and
 - (c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

11. Content of administration application and witness statement

- (1) The administration application shall contain a statement of the applicant's belief that the Company is, or is likely to become, unable to pay its debts, except where the applicant is the holder of a qualifying charge and is making the application in reliance on Section 37 (*Application by holder of qualifying charge*).
- (2) There shall be attached to the administration application a witness statement in support which shall contain—
 - (a) a statement of the Company's financial position, specifying (to the best of the applicant's knowledge and belief) the Company's assets and liabilities, including contingent and prospective liabilities;
 - (b) details of any security known or believed to be held by creditors of the Company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under Section 21 (*Power to appoint*). If an administrative receiver has been appointed, that fact shall be stated;
 - (c) details of any Insolvency Proceedings in relation to the Company including any petition that has been presented for the winding-up of the Company so far as known to the applicant;
 - (d) where it is intended to appoint a number of persons as administrators of a Company, details of the matters set out in Section 145(2) (*Joint administrators*) regarding the exercise of the function of the administrators of the Company; and

- (e) any other matters which, in the opinion of those intending to make the administration application, will assist the Court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.
- (3) Where the administration application is made by the holder of a qualifying charge in reliance on Section 37 (*Application by holder of qualifying charge*), he shall give sufficient details in the witness statement in support to satisfy the Court that he is entitled to appoint an administrator of the Company under Section 21 (*Power to appoint*).

12. Filing of administration application

- (1) The administration application (and all supporting documents) shall be filed with the Court in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*) and served in accordance with Section 13 (*Service of administration application*).
- (2) When issuing the administration application, the Court shall endorse it with the date and time of filing.
- (3) The Court shall fix a venue for the hearing which shall be included in a notice of listing which is to be served with the administration application.
- (4) After the administration application is filed, it is the duty of the applicant to notify the Court in writing of the existence of any Insolvency Proceedings.

13. Service of administration application

- (1) In Section 8(2) (*Administration application*) and this Section, references to the administration application are to a copy of the administration application issued by the Court under Section 12(2) (*Filing of administration application*) together with the witness statement required by Section 11 (*Content of administration application and witness statement*) and the documents attached to the administration application.
- (2) Notification of the administration application for the purposes of Section 8(2) (*Administration application*) shall be by way of service in accordance with Section 15 (*Manner in which service to be effected*), verified in accordance with Section 16 (*Proof of service*).

14. Notice to officers charged with execution of writs or other process

The applicant shall as soon as reasonably practicable after filing the administration application give notice of its being made to—

- (a) any enforcement officer or other officer who, to his knowledge, is charged with an execution or other legal process against the Company or its property; and
- (b) any person who to his knowledge has distrained against the Company or its property.

15. Manner in which service to be effected

- (1) Service of the administration application in accordance with Section 13 (*Service of administration application*) shall be effected by the applicant, or his solicitor or legal representative, or by a person instructed by him or his solicitor or legal representative, not less than five (5) business days before the date fixed for the hearing.
- (2) Service shall be effected on the Company or any other person in accordance with Part 4 of the ADGM Court Procedure Rules.

16. Proof of service

- (1) Service of the application must be verified by a certificate of service.
- (2) The certificate of service must be sufficient to identify the administration application served and must specify—
 - (a) the name and registered number of the Company;
 - (b) the address of the registered office of the Company;
 - (c) the name of the applicant;
 - (d) the Court reference number;
 - (e) the date of the administration application;
 - (f) whether the copy served was a sealed copy;
 - (g) the date on which service was effected; and
 - (h) the manner in which service was effected.
- (3) The certificate of service shall be filed with the Court as soon as reasonably practicable after service, and in any event not less than one (1) business day before the hearing of the administration application.

17. Administration application to appoint specified person as administrator by holder of qualifying charge

- (1) Where the holder of a qualifying charge applies to the Court under Section 38(1)(b) (*Intervention by holder of a qualifying charge*), he shall produce to the Court—
 - (a) the written consent of all holders of any prior qualifying charge;
 - (b) a written statement containing the information prescribed in paragraph 46 of Schedule 1 made by the specified person proposed by him as administrator of the Company; and
 - (c) sufficient evidence to satisfy the Court that he is entitled to appoint an administrator of the Company under Section 21 (*Power to appoint*).
- (2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and the applicant under Section 38(1)(b) (*Intervention by holder of a qualifying charge*) shall, unless the Court otherwise orders, be paid as an expense of the administration.

18. Powers of Court

- (1) On hearing an administration application the Court may—
 - (a) make the administration order sought;
 - (b) dismiss the administration application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) treat the administration application as a winding-up petition and make any order which the Court could make under Section 206 (*Powers of Court on hearing of petition*); and/or

- (f) make any other order which the Court thinks appropriate.
- (2) An appointment of an administrator of a Company by administration order takes effect—
 - (a) at a time appointed by the order; or
 - (b) where no time is appointed by the order, when the order is made.
- (3) An interim order under subsection (1)(d) may, in particular—
 - (a) restrict the exercise of a power of the Directors or the Company; and/or
 - (b) make provision conferring a discretion on the Court or on an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) in relation to the Company.
- (4) This Section is subject to Section 41 (*Effect of administrative receivership*).

19. The hearing

- (1) At the hearing of the administration application, any of the following may appear or be represented—
 - (a) the applicant;
 - (b) the Company;
 - (c) one or more of the Directors;
 - (d) if an administrative receiver has been appointed, that person;
 - (e) any person who has presented a petition for the winding-up of the Company;
 - (f) the person proposed for appointment as administrator of the Company;
 - (g) any person that is the holder of a qualifying charge; or
 - (h) with the permission of the Court, any other person who appears to have an interest justifying his appearance.
- (2) If the Court makes an administration order, it shall contain such matters as may be prescribed with such amendments as the Court considers appropriate.
- (3) If the Court makes an administration order, the costs of the applicant, and of any person whose costs are allowed by the Court, are payable as an expense of the administration.
- (4) Where the Court makes an administration order in relation to a Company upon an administration application under Section 39 (*Application where Company in liquidation*), the Court shall include in the order—
 - (a) in the case of a liquidator appointed in a voluntary winding-up, his removal from office;
 - (b) details concerning the release of the liquidator;
 - (c) provision for payment of the expenses of the liquidation;
 - (d) provisions regarding any indemnity given to the liquidator;

- (e) provisions regarding the handling or realisation of any of the Company's property in the hands of or under the control of the liquidator;
- (f) such provision as the Court thinks just with respect to matters arising in connection with the liquidation; and
- (g) such other provisions as the Court shall think just.

20. Notice of administration order

- (1) If the Court makes an administration order, the order shall be filed on the eCourts Platform where it will be made available to the person who made the administration application.
- (2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as administrator of a Company.
- (3) If the Court makes an interim order under Section 18(1)(d) (*Powers of Court*) or any other order under Section 18(1)(f) (*Powers of Court*), it shall give directions as to the persons to whom, and how, notice of that order is to be given.

Chapter 3 - Appointment of Administrator of a Company by Holder of Qualifying Charge

21. Power to appoint

- (1) The holder of a qualifying charge in respect of a Company's property may appoint an administrator of the Company.
- (2) For the purposes of subsection (1) a charge qualifies if created by an instrument which—
 - (a) states that this subsection applies to the charge;
 - (b) purports to empower the holder of the charge to appoint an administrator of the Company; or
 - (c) purports to empower the holder of the charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Section 152 (*Appointment and powers of receivers and administrative receivers*).
- (3) For the purposes of subsection (1) a person is the holder of a qualifying charge in respect of a Company's property if he holds one or more debentures of the Company secured—
 - (a) by a qualifying charge which relates to the whole or substantially the whole of the Company's property; or
 - (b) by a number of qualifying charges and other forms of security which together relate to the whole or substantially the whole of the Company's property.

22. Restrictions on power to appoint

- (1) A person may not appoint an administrator of a Company under Section 21 (*Power to appoint*) unless—
 - (a) he has given at least two business days' written notice of the intention to appoint to the holder of any prior charge which satisfies Section 21(2) (*Power to appoint*); or

- (b) the holder of any prior charge which satisfies Section 21(2) (*Power to appoint*) has consented in writing to the making of the appointment.
- (2) One charge is prior to another for the purposes of this Section and Section 140 (*Substitution of administrator: competing qualifying charge-holder*) if—
 - (a) it is to be treated as having priority in accordance with an agreement to which the holder of each charge was party; or if there is no such agreement determining priority
 - (b) it (or in the case of Section 21(3)(b) (*Power to appoint*), any charge or security forming part of it) is registered under section 784 (*Charges created by a company*) of the Companies Regulations 2020 and was created first.
- (3) An administrator of a Company may not be appointed under Section 21 (*Power to appoint*) while a charge on which the appointment relies is not enforceable.
- (4) An administrator of a Company may not be appointed under Section 21 (*Power to appoint*) if—
 - (a) a provisional liquidator of the Company has been appointed under Section 210 (*Appointment of provisional liquidator or of liquidator following administration*); or
 - (b) an administrative receiver of the Company is in office.

23. Notice of appointment

- (1) A person who appoints an administrator of a Company under Section 21 (*Power to appoint*) shall file with the Court—
 - (a) a notice of appointment containing the information prescribed in paragraph 50 of Schedule 1; and
 - (b) the administrator's written statement containing the information prescribed in paragraph 46 of Schedule 1; and
 - (c) either—
 - (i) evidence that the person making the appointment has given such notice as may be required by Section 22(1)(a) (*Restrictions on power to appoint*); or
 - (ii) copies of the written consent of all those required to give consent in accordance with Section 22(1)(b) (*Restrictions on power to appoint*); and
 - (d) a statement of those matters provided for in Section 145(2) (*Joint administrators*), if applicable.
- (2) The notice of appointment must include a declaration containing the information prescribed in paragraph 50 of Schedule 1 by or on behalf of the person who makes the appointment—
 - (a) that the person is the holder of a qualifying charge in respect of the Company's property;
 - (b) that each charge relied on in making the appointment is (or was) enforceable on the date of the appointment; and

- (c) that the appointment is in accordance with this Part 1 (*Administration*).
- (3) The notice of appointment must identify the administrator of the Company and must be accompanied by a statement by the administrator of the Company—
 - (a) that he consents to the appointment;
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved; and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under subsection (3) an administrator of the Company may rely on information supplied by Directors of the Company (unless he has reason to doubt its accuracy).
- (5) A declaration under subsection (2) must be made not more than five (5) business days before the form is filed with the Court.
- (6) A person commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if in a declaration under subsection (2) he makes a statement—
 - (a) which is false; and
 - (b) which he does not reasonably believe to be true.

24. Notice of intention to appoint

- (1) The notice of intention to appoint an administrator by a holder of a qualifying charge shall include such information as prescribed in paragraph 48 of Schedule 1.
- (2) A copy of the notice of intention to appoint shall be filed with the Court at the same time as it is sent in accordance with Section 22(1) (*Restrictions on power to appoint*) to the holder of any prior qualifying charge.
- (3) The provisions of Section 15(2) (*Manner in which service to be effected*) shall apply to the sending of such notice as they apply to the manner in which service of an administration application is effected under that Section.

25. Notice of appointment

- (1) Written consent may be given by the holder of a prior qualifying charge where a notice of intention to appoint an administrator of a Company has been given and filed with the Court in accordance with Section 24 (*Notice of intention to appoint*), by completing the section provided on the prescribed form and returning to the appointor a copy of the form.
- (2) Where the holder of a prior qualifying charge does not choose to complete the section provided on the prescribed form to indicate his consent, or no such form has been sent to him, his written consent shall include—
 - (a) details of the name, address of registered office and registered number of the Company in respect of which the appointment is proposed to be made;
 - (b) details of the charge held by him including the date it was registered and, where applicable, any financial limit and any deeds of priority;
 - (c) his name and address;

- (d) the name and address of the holder of the qualifying charge who is proposing to make the appointment;
 - (e) the date that notice of intention to appoint was given;
 - (f) the name of the proposed administrator of the Company; and
 - (g) a statement of consent to the proposed appointment,
- and it shall be authenticated and dated.
- (3) This Section is subject to Section 27 (*Appointment taking place out of Court business hours*), the provisions of which apply when an appointment is to be made out of Court business hours.
 - (4) The notice of appointment shall be filed with the Court in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).
 - (5) When issuing the notice of appointment, the Court shall endorse it with the date and time of filing and the person making the appointment shall as soon as reasonably practicable send an endorsed copy to the administrator of the Company.
 - (6) Where, after receiving notice that an administration application has been made, the holder of a qualifying charge appoints an administrator of the Company in reliance on Section 21 (*Power to appoint*), he shall, as soon as reasonably practicable, send a copy of the notice of appointment to the person making the administration application and to the Court in which the application has been made.

26. Commencement of appointment

- (1) The appointment of an administrator of a Company under Section 21 (*Power to appoint*) takes effect when the requirements of Section 23 (*Notice of appointment*) are satisfied.
- (2) A person who appoints an administrator of a Company under Section 21 (*Power to appoint*)—
 - (a) shall notify the administrator of the Company and such other persons as prescribed under Section 8(2) (*Administration application*) as soon as is reasonably practicable after the requirements of Section 23 (*Notice of appointment*) are satisfied; and
 - (b) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with paragraph (a).

27. Appointment taking place out of Court business hours

- (1) The holder of a qualifying charge may file a notice of appointment with the Court, notwithstanding that the Court is not open for public business, in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*). The notice of appointment shall:
 - (a) contain the information prescribed in paragraph 50 of Schedule 1;
 - (b) attach or include a statement providing full reasons for the out of hours filing of the notice of appointment, including why it would have been damaging to the Company and its creditors not to have so acted; and

- (c) be accompanied by all of the necessary supporting documents as may be prescribed in Section 23 (*Notice of Appointment*) and, as applicable, Section 25 (*Notice of Appointment*).
- (2) The filing of a notice in accordance with this Section shall have the same effect for all purposes as a notice of appointment filed with the Court in accordance with Section 26(1) (*Commencement of Appointment*).
- (3) As soon as reasonably practicable, the appointor shall notify the administrator that the notice of appointment has been issued by the Court and send him a sealed copy of the notice.

28. Invalid appointment: indemnity

- (1) This Section applies where—
 - (a) a person purports to appoint an administrator of a Company under Section 21 (*Power to appoint*); and
 - (b) the appointment is discovered to be invalid.
- (2) The Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

Chapter 4 - Appointment of Administrator by Company or Directors

29. Power to appoint

- (1) A Company may appoint an administrator of the Company.
- (2) The Directors of a Company may appoint an administrator of the Company.

30. Restrictions on power to appoint

- (1) This Section applies where an administrator of a Company is appointed under Section 29 (*Power to appoint*).
- (2) An administrator of the Company may not be appointed under Section 29 (*Power to appoint*) during the period of twelve (12) months beginning with the date on which the appointment referred to in subsection (1) ceases to have effect.
- (3) An administrator of a Company may not be appointed under Section 29 (*Power to appoint*) if—
 - (a) a petition for the winding-up of the Company has been presented and is not yet disposed of;
 - (b) an administration application has been made and is not yet disposed of; or
 - (c) an administrative receiver of the Company is in office.

31. Notice of intention to appoint

- (1) A person who proposes to make an appointment under Section 29 (*Power to appoint*) shall give at least five business days' written notice to—
 - (a) any person who is or may be entitled to appoint an administrative receiver of the Company; and

- (b) any person who is or may be entitled to appoint an administrator of the Company under Section 21 (*Power to appoint*).
- (2) A person who proposes to make an appointment under Section 29 (*Power to appoint*) shall also give a copy of the notice of intention to appoint to—
 - (a) any enforcement officer who, to the knowledge of the person giving the notice, is charged with execution or other legal process against the Company;
 - (b) any person who, to the knowledge of the person giving the notice, has distrained against the Company or its property; and
 - (c) the Company, if the Company is not intending to make the appointment.
- (3) A notice under this Section must—
 - (a) identify the proposed administrator of the Company; and
 - (b) contain the information prescribed in Section 49 of Schedule 1.
- (4) A person who gives notice of intention to appoint under this Section shall file with the Court as soon as is reasonably practicable a copy of—
 - (a) the notice; and
 - (b) any document accompanying it.
- (5) The copy filed under subsection (4) must be accompanied by a declaration containing the information prescribed in this subsection made by or on behalf of the person who proposes to make the appointment—
 - (a) that the Company is or is likely to become unable to pay its debts;
 - (b) that the Company is not in liquidation;
 - (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by Section 30 (*Restrictions on power to appoint*); and
 - (d) to such additional effect, and giving such information, as may be prescribed.
- (6) A declaration under subsection (5) must be made not more than five (5) business days before the notice is filed with the Court.
- (7) A person commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if in a declaration under subsection (5) he makes a statement—
 - (a) which is false; and
 - (b) which he does not reasonably believe to be true.
- (8) An appointment may not be made under Section 29 (*Power to appoint*) unless the person who makes the appointment has complied with any requirement of this Section and—
 - (a) the period of notice specified in subsection (1) has expired; or
 - (b) each person to whom notice has been given under subsection (1) has consented in writing to the making of the appointment.

- (9) An appointment may not be made under Section 29 (*Power to appoint*) after the period of ten
- (10) business days beginning with the date on which the notice of intention to appoint is filed under subsection (4).

32. Notice of an intention to appoint

- (1) The provisions of Section 15(2) (*Manner in which service to be effected*) shall apply to the sending or giving of a notice of intention to appoint under Section 31 (*Notice of an intention to appoint*) as they apply to the manner in which service of an administration application is effected under that Section.
- (2) The notice of intention to appoint shall be accompanied by either a copy of the resolution of the Company to appoint an administrator of the Company (where the Company intends to make the appointment) or a record of the decision of the Directors (where the Directors intend to make the appointment).

33. Notice of appointment

- (1) A person who appoints an administrator of a Company under Section 29 (*Power to appoint*) shall file with the Court—
 - (a) a notice of appointment; and
 - (b) such other documents as are prescribed by Section 34 (*Notice of appointment under Section 29*).
- (2) The notice of appointment must include a declaration containing the information prescribed in this subsection by or on behalf of the person who makes the appointment—
 - (a) that the person is entitled to make an appointment under Section 29 (*Power to appoint*);
 - (b) that the appointment is in accordance with this Part 1 (*Administration*); and
 - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the declaration filed with the notice of intention to appoint remain accurate.
- (3) The notice of appointment must identify the administrator of the Company and must be accompanied by a statement by the administrator—
 - (a) that he consents to the appointment;
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved; and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under subsection (3) an administrator of a Company may rely on information supplied by Directors of the Company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment shall contain the information prescribed by subsections (2) and (3).
- (6) A declaration under subsection (2) must be made not more than five (5) business days before the notice is filed with the Court.

- (7) A person commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if in a declaration under subsection (2) he makes a statement—
- (a) which is false; and
 - (b) which he does not reasonably believe to be true.
- (8) In a case in which no person is entitled to notice of intention to appoint under Section 31(1) (*Notice of intention to appoint*) (and Section 31(8) and (9) (*Notice of intention to appoint*)) therefore do not apply—
- (a) the declaration accompanying the notice of appointment must include the statements and information required under Section 31(5) (*Notice of intention to appoint*); and
 - (b) Section 34(1)(c) (*Notice of appointment under Section 29*) shall not apply.

34. Notice of appointment under Section 29

- (1) The copies of the notice filed with the Court shall be accompanied by—
- (a) the written statement of the administrator of the Company containing the information prescribed in paragraph 46 of Schedule 1;
 - (b) the written consent of all those persons to whom notice was given in accordance with Section 31(1) (*Notice of intention to appoint*) unless the period of notice set out in Section 31(1) (*Notice of intention to appoint*) has expired; and
 - (c) a statement of the matters provided for in Section 145(2) (*Joint administrators*), where applicable.
- (2) Where a notice of intention to appoint an administrator of a Company has not been given, the notice of appointment shall be accompanied by the documents specified in Section 32(2) (*Notice of an intention to appoint*).
- (3) The notice of appointment shall be filed with the Court in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).
- (4) When issuing the notice of appointment, the Court shall endorse it with the date and time of filing and the person making the appointment shall as soon as reasonably practicable send an endorsed copy to the administrator of the Company.

35. Commencement of appointment

- (1) The appointment of an administrator of a Company under Section 29 (*Power to appoint*) takes effect when the requirements of Section 33 (*Notice of appointment*) are satisfied.
- (2) A person who appoints an administrator of a Company under Section 29 (*Power to appoint*)—
- (a) shall notify the administrator of the Company and such other persons as prescribed under Section 8(2) (*Administration application*) as soon as is reasonably practicable after the requirements of Section 33 (*Notice of appointment*) are satisfied; and
 - (b) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with paragraph (a).

- (3) If before the requirements of Section 33 (*Notice of appointment*) are satisfied the Company enters administration by virtue of an administration order or an appointment under Section 21 (*Power to appoint*)—
 - (a) the appointment under Section 29 (*Power to appoint*) shall not take effect; and
 - (b) subsection (2) shall not apply.
- (4) The notice of appointment to be given by the administrator of a Company as soon as reasonably practicable after appointment under Section 48(2) (*Announcement of administrator's appointment*) shall be published in the Abu Dhabi Global Market and may be advertised in such other manner as the administrator of the Company thinks fit.

36. Invalid appointment: indemnity

- (1) This Section applies where—
 - (a) a person purports to appoint an administrator of a Company under Section 29 (*Power to appoint*); and
 - (b) the appointment is discovered to be invalid.
- (2) The Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

Chapter 5 - Administration Application (special cases)

37. Application by holder of qualifying charge

- (1) This Section applies where an administration application in respect of a Company—
 - (a) is made by the holder of a qualifying charge in respect of the Company's property; and
 - (b) includes a statement that the application is made in reliance on this Section.
- (2) The Court may make an administration order—
 - (a) whether or not satisfied that the Company is or is likely to become unable to pay its debts; but
 - (b) only if satisfied that the applicant could appoint an administrator of the Company under Section 21 (*Power to appoint*).

38. Intervention by holder of qualifying charge

- (1) This Section applies where—
 - (a) an administration application in respect of a Company is made by a person who is not the holder of a qualifying charge in respect of the Company's property; and
 - (b) the holder of a qualifying charge in respect of the Company's property applies to the Court to have a specified person appointed as administrator of the Company (and not the person specified by the administration applicant).
- (2) The Court shall grant an application under subsection (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

39. Application where Company in liquidation

- (1) Subsections (2) and (3) apply where the holder of a qualifying charge in respect of a Company's property could appoint an administrator of the Company under Section 21 (*Power to appoint*) but for Section 5(3)(b) (*General restrictions*).
- (2) The holder of the qualifying charge may make an administration application.
- (3) If the Court makes an administration order on hearing an application made by virtue of subsection (2)—
 - (a) the Court shall discharge the winding-up order;
 - (b) the Court shall make provision for such matters as may be prescribed with such amendments as the Court considers appropriate;
 - (c) the Court may make other consequential provision;
 - (d) the Court shall specify which of the powers under this Part 1 (*Administration*) are to be exercisable by the administrator of the Company; and
 - (e) this Part 1 (*Administration*) shall have effect with such modifications as the Court may specify.
- (4) The liquidator of a Company may make an administration application.
- (5) If the Court makes an administration order on hearing an application made by virtue of subsection (4)—
 - (a) the Court shall discharge any winding-up order in respect of the Company;
 - (b) the Court shall make provision for such matters as may be prescribed with such amendments as the Court considers appropriate;
 - (c) the Court may make other consequential provision;
 - (d) the Court shall specify which of the powers under this Part 1 (*Administration*) are to be exercisable by the administrator of the Company; and
 - (e) this Part 1 (*Administration*) shall have effect with such modifications as the Court may specify.

40. Application where Company in liquidation

- (1) Where an administration application is made under Section 39 (*Application where Company in liquidation*), the witness statement required by Section 11 (*Content of administration application and witness statement*) shall contain—
 - (a) full details of the existing Insolvency Proceedings, the name and address of the liquidator, the date he was appointed and by whom;
 - (b) the reasons why it has subsequently been considered appropriate that an administration application should be made;
 - (c) all other matters that would, in the opinion of the applicant, assist the Court in considering the need to make provisions in respect of matters arising in connection with the liquidation; and
 - (d) the details required in Section 11(2) (*Content of administration application and witness statement*).

- (2) Where the application is made by the holder of a qualifying charge he shall set out sufficient evidence in the witness statement required by Section 11 (*Content of administration application and witness statement*) to satisfy the Court that he is entitled to appoint an administrator of the Company under Section 21 (*Power to appoint*).

41. Effect of administrative receivership

- (1) Where there is an administrative receiver of a Company the Court must dismiss an administration application in respect of the Company unless—
- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order; or
 - (b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Sections 257 (*Transactions at an undervalue*) to 259 (*Relevant time*) if an administration order were made.
- (2) Subsection (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

Chapter 6 - Effect of Administration

42. Dismissal of pending winding-up petition

- (1) A petition for the winding-up of a Company—
- (a) shall be dismissed on the making of an administration order in respect of the Company; and
 - (b) shall be suspended while the Company is in administration following an appointment under Section 21 (*Power to appoint*).
- (2) Subsection (1)(b) does not apply to a petition presented under Section 203 (*Petition for winding-up by the Financial Services Regulator*).
- (3) Where an administrator of a Company becomes aware that a petition was presented under a provision referred to in subsection (2) before his appointment, he shall apply to the Court for directions under Section 95(7) (*General powers*).

43. Dismissal of administrative or other receiver

- (1) When an administration order takes effect in respect of a Company any administrative receiver of the Company shall vacate office.
- (2) Where a Company is in administration, any receiver of part of the Company's property shall vacate office if the administrator of the Company requires him to.
- (3) Where an administrative receiver or receiver vacates office under subsection (1) or (2) his remuneration shall be charged on and paid out of any property of the Company which was in his custody or under his control immediately before he vacated office.
- (4) In the application of subsection (3)—
- (a) “**remuneration**” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the property of the Company;
 - (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed; and

- (c) the provision for payment is subject to Section 45 (*Moratorium on other legal process*).

44. Moratorium on Insolvency Proceedings

- (1) This Section applies to a Company in administration.
- (2) No resolution may be passed for the winding-up of the Company.
- (3) No order may be made for the winding-up of the Company.
- (4) Subsection (3) does not apply to an order made on a petition presented under Section 203 (*Petition for winding-up by the Financial Services Regulator*).
- (5) If a petition presented under a provision referred to in subsection (4) comes to the attention of the administrator of the Company, he shall apply to the Court for directions under Section 95(7) (*General powers*).

45. Moratorium on other legal process

- (1) This Section applies to a Company in administration.
- (2) No step may be taken to enforce security over the Company's property except—
 - (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (3) No step may be taken to repossess goods in the Company's possession under a hire-purchase agreement except—
 - (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (4) A landlord may not exercise a right of re-entry in relation to premises let to the Company except—
 - (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (5) No legal process (including legal proceedings) may be instituted or continued against the Company or property of the Company except—
 - (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (6) An administrative receiver of the Company may not be appointed.
- (7) Where the Court gives permission for a transaction under this Section it may impose a condition on, or a requirement in connection with, the transaction.
- (8) In this subsection "**landlord**" includes a person to whom rent is payable.

46. Interim moratorium

- (1) This Section applies where an administration application in respect of a Company has been made and—
 - (a) the application has not yet been granted or dismissed; or

- (b) the application has been granted but the administration order has not yet taken effect.
- (2) This Section also applies from the time when a copy of notice of intention to appoint an administrator of a Company under Section 21 (*Power to appoint*) is filed with the Court until—
 - (a) the appointment of the administrator of the Company takes effect; or
 - (b) the period of five business days beginning with the date of filing expires without an administrator of the Company having been appointed.
- (3) Subsection (2) has effect in relation to a notice of intention to appoint only if it contains the information prescribed in paragraph 48 of Schedule 1.
- (4) This Section also applies from the time when a copy of a notice of intention to appoint an administrator of a Company is filed with the Court under Section 31(4) (*Notice of intention to appoint*) until—
 - (a) the appointment of the administrator of the Company takes effect; or
 - (b) the period specified in Section 31(9) (*Notice of intention to appoint*) expires without an administrator of the Company having been appointed.
- (5) The provisions of Sections 44 (*Moratorium on Insolvency Proceedings*) and 45 (*Moratorium on other legal process*) shall apply (ignoring any reference to the consent of the administrator of the Company).
- (6) If there is an administrative receiver of the Company when the administration application is made, the provisions of Sections 44 (*Moratorium on Insolvency Proceedings*) and 45 (*Moratorium on other legal process*) shall not begin to apply by virtue of this Section until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.
- (7) This Section does not prevent or require the permission of the Court for—
 - (a) the presentation of a petition for the winding-up of the Company under a provision mentioned in Section 44(4) (*Moratorium on Insolvency Proceedings*);
 - (b) the appointment of an administrator of the Company under Section 21 (*Power to appoint*);
 - (c) the appointment of an administrative receiver of the Company; or
 - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

47. Publicity

- (1) While a Company is in administration, every business document issued by or on behalf of the Company or the administrator of the Company, and all the Company's websites, must state—
 - (a) the name of the administrator of the Company; and
 - (b) that the affairs, business and property of the Company are being managed by the administrator of the Company.

- (2) Any of the following persons commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if without reasonable excuse the person authorises or permits a contravention of subsection (1)—
- (a) the administrator of the Company;
 - (b) an officer of the Company; and
 - (c) the Company.
- (3) While a Company is subject to a Deed of Company Arrangement, every business document issued by or on behalf of the Company, and all the Company's websites must state that the Company is subject to a Deed of Company Arrangement, unless the Court otherwise grants leave.
- (4) Any of the following persons commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if without reasonable excuse the person authorises or permits a contravention of subsection (3)—
- (a) the administrator of the Deed of Company Arrangement;
 - (b) an officer of the Company; and
 - (c) the Company.
- (5) The Court may only grant leave under subsection (3) on the application of the administrator of the Deed of Company Arrangement or other interested party and only if it is satisfied that the granting of such leave will not result in a significant risk to the interests of the Company's creditors (including contingent or prospective creditors) as a whole.
- (6) In subsections (1) and (3) "**business document**" means—
- (a) an invoice;
 - (b) an order for goods or services;
 - (c) a business letter; and
 - (d) an order form,
- whether in hard copy, electronic or any other form.

Chapter 7 - Process of Administration

48. Announcement of administrator's appointment

- (1) This Section applies where a person becomes the administrator of a Company.
- (2) As soon as is reasonably practicable the administrator shall—
- (a) send a notice of his appointment to the Company; and
 - (b) publish a notice of his appointment on the Registrar's website or in an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market.
- (3) As soon as is reasonably practicable the administrator shall—
- (a) obtain a list of the Company's creditors; and

- (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
- (4) The administrator of the Company shall send a notice of his appointment to the Registrar before the end of the period of seven (7) days beginning with the date specified in subsection (6).
- (5) The administrator of the Company shall, as soon as reasonably practicable after the date specified in subsection (6), give notice of his appointment—
 - (a) if a receiver or an administrative receiver has been appointed, to him;
 - (b) if there is pending a petition for the winding-up of the Company, to the petitioner (and also to the provisional liquidator, if any);
 - (c) to any enforcement officer who, to the knowledge of the administrator of the Company, is charged with execution or other legal process against the Company; and
 - (d) to any person who, to the administrator's knowledge, has distrained against the Company or its property.
- (6) The date for the purpose of subsections (4) and (5) is—
 - (a) in the case of an administrator of the Company appointed by administration order, the date of the order;
 - (b) in the case of an administrator of the Company appointed under Section 21 (*Power to appoint*), the date on which he receives notice under Section 26(2) (*Commencement of appointment*); and
 - (c) in the case of an administrator of the Company appointed under Section 29 (*Power to appoint*), the date on which he receives notice under Section 35(2) (*Commencement of appointment*).
- (7) The Court may direct that subsection (3)(b) or (5)—
 - (a) shall not apply; or
 - (b) shall apply with the substitution of a different period.
- (8) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with a requirement of this Section.

49. Notification and advertisement of administrator's appointment

- (1) In addition to the standard contents, the notice under Section 48(5) (*Announcement of administrator's appointment*) must state—
 - (a) that an administrator of the Company has been appointed;
 - (b) the date of the appointment; and
 - (c) the nature of the business of the Company.
- (2) Where, under a provision of this Part 1 (*Administration*), the administrator of a Company is required to send a notice of his appointment to any person other than the Registrar, he shall include the information prescribed in subsection (1).

50. Notice requiring Statement of Affairs

- (1) As soon as reasonably practicable after his appointment, the administrator of a Company shall send notice containing the information prescribed in subsection (2) to each relevant person whom he determines appropriate requiring him or them to prepare and submit a statement of the Company's affairs.
- (2) The notice shall inform each of the relevant persons—
 - (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) of the time within which the statement must be delivered;
 - (c) of the effect of Section 51(7) (*Statement of Company's affairs*); and
 - (d) of the application to him, and to each other relevant person, of Section 255 (*Duty to cooperate with Office-holder*).
- (3) The administrator of a Company shall furnish each relevant person to whom he has sent notice in accordance with this Section with the forms required for the preparation of the Statement of Affairs.

51. Statement of Company's affairs

- (1) The statement of Company's affairs must—
 - (a) be verified by a statement of truth by each relevant person in accordance with the ADGM Court Procedure Rules;
 - (b) be in the prescribed form, containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (2) In this Chapter "**relevant person**" means—
 - (a) a person who is or has been an officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters administration;
 - (c) a person employed by the Company during that period; and
 - (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (3) For the purpose of subsection (2) a reference to employment is a reference to employment through a contract of employment or a contract for services.
- (4) A person required to submit a Statement of Affairs must do so before the end of the period of eleven (11) days beginning with the day on which he receives notice of the requirement.

- (5) The administrator of a Company may—
 - (a) revoke a requirement under Section 50(1) (*Notice requiring Statement of Affairs*); or
 - (b) extend the period specified in subsection (4) (whether before or after expiry).
- (6) If the administrator of a Company refuses a request to act under subsection (5)—
 - (a) the person whose request is refused may apply to the Court; and
 - (b) the Court may take action of a kind specified in subsection (5).
- (7) A person commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with a requirement under Section 50(1) (*Notice requiring Statement of Affairs*).

52. Verification and filing

- (1) The administrator of a Company may require any relevant person to submit a statement of concurrence in the prescribed form stating that he concurs in the Statement of Affairs. Where the administrator of a Company does so, he shall inform each person making the Statement of Affairs of that fact.
- (2) The Statement of Affairs shall be delivered by the relevant person or persons making the statement of truth, together with a copy, to the administrator of the Company. The relevant person or persons shall also deliver a copy of the Statement of Affairs to all those persons whom the administrator of the Company has required to make a statement of concurrence.
- (3) A person required to submit a statement of concurrence shall do so before the end of the period of five (5) business days (or such other period as the administrator of the Company may agree) beginning with the day on which the Statement of Affairs being concurred with is received by him.
- (4) A statement of concurrence may be qualified in respect of matters dealt with in the Statement of Affairs, where the maker of the statement of concurrence is not in agreement with the relevant person or persons, or he considers the Statement of Affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.
- (5) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrator of the Company by the person who makes it, together with a copy of it.
- (6) Subject to Section 53 (*Limited disclosure*), the administrator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the Statement of Affairs and any statement of concurrence.

53. Limited disclosure

- (1) Where the administrator of a Company thinks that it would prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the Company's affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.
- (2) The Court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the Registrar.

- (3) The administrator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the order and the Statement of Affairs (to the extent provided by the order) and any statement of concurrence.
- (4) If a creditor seeks disclosure of a Statement of Affairs or a specified part of it in relation to which an order has been made under this Section, he may apply to the Court for an order that the administrator of a Company disclose it or a specified part of it. The application shall be supported by written evidence in the form of a witness statement.
- (5) The applicant shall give the administrator of a Company notice of his application at least three (3) business days before the hearing.
- (6) The Court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.
- (7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator of a Company shall, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (8) The administrator of a Company shall, as soon as reasonably practicable after the making of an order under subsection (7) file with the Registrar a copy of the Statement of Affairs to the extent provided by the order.
- (9) When the Statement of Affairs is filed in accordance with subsection (8), the administrator of a Company shall, where he has sent a statement of proposals under Section 56 (*Administrator's proposals*), provide the creditors with a copy of the Statement of Affairs as filed, or a summary thereof.
- (10) The provisions of the ADGM Court Procedure Rules relating to disclosure and inspection of documents shall not apply to an application under this Section.

54. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the administrator of a Company under Section 51(5) (*Statement of Company's affairs*) to give a release from the obligation imposed by Section 50(1) (*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.
- (2) A relevant person may, if he requests a release or extension of time and it is refused by the administrator of a Company, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five (5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.
- (4) The relevant person shall, at least fourteen (14) days before the hearing, send to the administrator of the Company a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The administrator of a Company may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.

- (6) If such a report is filed, a copy of it shall be sent by the administrator of the Company to the relevant person, not later than five (5) business days before the hearing.
- (7) A sealed copy of any order shall be provided by the Court to the relevant person and the administrator of the Company in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the administration.

55. Expense of Statement of Affairs

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the administrator of the Company as an expense of the administration, any expenses incurred by the relevant person in so doing which the administrator of the Company considers reasonable.
- (2) Any decision by the administrator of a Company under this Section is subject to appeal to the Court.
- (3) Nothing in this Section relieves a relevant person from any obligation with respect to the preparation, verification and submission of the Statement of Affairs, or to the provision of information to the administrator of a Company.

56. Administrator's proposals

- (1) The administrator of a Company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under subsection (1) must, in particular—
 - (a) deal with such matters as may be prescribed by Section 57 (*Administrator's statement of proposals*); and
 - (b) where applicable, explain why the administrator of the Company thinks that the objective mentioned in Section 2(1)(a) or 2(1)(b) (*Purpose of Administration*) cannot be achieved.
- (3) Proposals under this Section may include—
 - (a) a proposal for a compromise or arrangement to be sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations 2020; or
 - (b) a proposal for a Deed of Company Arrangement.
- (4) If the administrator of a Company proposes a Deed of Company Arrangement, the statement of his proposals shall include—
 - (a) a statement that in his opinion it would be in the creditors' interest for the Company to execute a Deed of Company Arrangement;
 - (b) the reasons for such opinion; and
 - (c) details of the proposed Deed of Company Arrangement.
- (5) The administrator shall send a copy of the statement of his proposals—
 - (a) to the Registrar;

- (b) to every creditor of the Company (other than an opted-out creditor) of whose claim and address he is aware; and
 - (c) to every member of the Company of whose address he is aware.
- (6) The administrator shall comply with subsection (5)—
 - (a) as soon as is reasonably practicable after the Company enters administration; and
 - (b) in any event, before the end of the period of eight (8) weeks beginning with the day on which the Company enters administration.
- (7) The administrator shall be taken to comply with subsection (5)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the Company who applies in writing to a specified address.
- (8) An administrator commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with subsection (6).
- (9) A period specified in this Section may be varied in accordance with Section 151 (*Extension of time limit*).

57. Administrator's statement of proposals

- (1) The statement of proposals of an administrator of a Company shall include, in addition to those matters set out in Section 56 (*Administrator's proposals*)—
 - (a) details of the relevant Court reference number;
 - (b) the full name, registered address, registered number and any other trading names of the Company;
 - (c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment and, where there are joint administrators, details of the matters set out in Section 145(2) (*Joint administrators*);
 - (d) the names of the Directors and secretary of the Company and details of any shareholdings in the Company they may have;
 - (e) an account of the circumstances giving rise to the appointment of the administrator of the Company;
 - (f) if a statement of the Company's affairs has been submitted, a copy or summary of it, with the comments of the administrator of the Company, if any;
 - (g) if an order limiting the disclosure of the Statement of Affairs (under Section 53 (*Limited disclosure*)) has been made, a statement of that fact, as well as—
 - (i) details of who provided the Statement of Affairs;
 - (ii) the date of the order of limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
 - (h) if a full Statement of Affairs is not provided, the names, addresses and debts of the creditors including details of any security held;

- (i) if no Statement of Affairs has been submitted, details of the financial position of the Company at the latest practicable date (which must, unless the Court otherwise orders, be a date not earlier than that on which the Company entered administration), a list of the Company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no Statement of Affairs;
 - (j) the basis upon which it is proposed that the remuneration of the administrator of the Company should be fixed under Section 109 (*Fixing of an administrator's remuneration*) and Schedule 12 (*Remuneration*);
 - (k) a statement complying with subsection (3) of any pre-administration costs charged or incurred by the administrator of the Company or, to his knowledge, by any other insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*);
 - (l) a statement (which must comply with subsection (4) where that subsection applies) of how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end;
 - (m) where the administrator of the Company has decided not to call a meeting of creditors, his reasons;
 - (n) the manner in which the affairs and business of the Company—
 - (i) have, since the date of the appointment of the administrator of the Company, been managed and financed, including, where any property has been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
 - (ii) will, if the proposals of the administrator of the Company are approved, continue to be managed and financed;
 - (o) such information as may be recommended to be disclosed by guidance, statements or recommendations, which are approved, adopted or issued by any regulatory authority which has registered the administrator pursuant to Section 290 (*Qualification and registration of insolvency practitioners*); and
 - (p) such other information (if any) as the administrator of the Company thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.
- (2) In this Part—
- (a) “**pre-administration costs**” are—
 - (i) fees charged; and
 - (ii) expenses incurred,
 by the administrator of a Company, or any other insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*), before the Company entered administration but with a view to its doing so; and
 - (b) “**unpaid pre-administration costs**” are pre-administration costs which had not been paid when the Company entered administration.

- (3) A statement of pre-administration costs complies with this Section if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
 - (b) details of the work done for which the fees were charged and expenses incurred;
 - (c) an explanation of why the work was done before the Company entered administration and how it would further the achievement of an objective in Section 2(1) (*Purpose of administration*) in accordance with Sections 2(2) to 2(4) (*Purpose of administration*);
 - (d) a statement of the amount of the pre-administration costs, setting out separately—
 - (i) the fees charged by the administrator of the Company;
 - (ii) the expenses incurred by the administrator of the Company;
 - (iii) the fees charged (to his knowledge) by any other insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) (and, if more than one, by each separately); and
 - (iv) the expenses incurred (to his knowledge) by any other person as an insolvency practitioner (and, if more than one, by each separately);
 - (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under paragraph (d));
 - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under paragraph (d);
 - (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under paragraph (d)); and
 - (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under Section 108 (*Pre-administration costs*); and
 - (ii) not part of the proposals subject to approval under Section 64 (*Business and result of initial creditors' meeting*).
- (4) This subsection applies where it is proposed that the administration will end by the Company moving to a creditors' voluntary liquidation; and in that case, the statement required by subsection (1)(l) must include—
- (a) details of the proposed liquidator; and
 - (b) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with Section 122(6)(a) (*Moving to creditors' voluntary liquidation*) and Section 123(2)(b) (*Moving to creditors' voluntary liquidation*).
- (5) Where the Court orders, upon an application by the administrator of a Company under Section 151 (*Extension of time limit*), an extension of the period of time in Section 56(6)

(*Administrator's proposals*), the administrator of the Company must as soon as reasonably practicable after the making of the order—

- (a) notify including the information prescribed by Schedule 1, Part 6 and Schedule 6, Part 3 every creditor of the Company and every member of the Company of whose address (in either case) the administrator of the Company is aware; and
 - (b) send a copy of the notification to the Registrar.
- (6) Where the administrator of a Company has made a statement under Section 61(6) (*Requirement for initial creditors' meeting*) and has not called an initial meeting of creditors, the proposals sent out under this Section and Section 56 (*Administrator's proposals*) will (if no meeting has been requisitioned under Section 61(7) (*Requirement for initial creditors' meeting*) within the period set out in Section 62 (*Meeting requisitioned by creditors*)) be deemed to have been approved by the creditors.
- (7) Where proposals are deemed under subsection (6) to have been approved, the administrator of a Company must, as soon as reasonably practicable after expiry of the period set out in Section 62 (*Meeting requisitioned by creditors*) give notice of the date on which they were deemed to have been approved to the Registrar, the Court and the creditors; and a copy of the proposals must be attached to the notice given to the Court and to creditors who have not previously received them.
- (8) Where the administrator of a Company intends to apply to the Court (or file a notice under Section 115(2) (*Termination of administration where objective achieved*)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with Section 56 (*Administrator's proposals*), he shall, at least seven (7) business days before he makes such an application (or files such a notice), send to all creditors of the Company (so far as he is aware of their addresses) a report containing the information required by subsections (1)(a) to (o) of this Section.
- (9) Where the administrator of a Company wishes to publish a notice under Section 56(7) (*Administrator's proposals*), the notice shall be advertised in such manner as he thinks fit.
- (10) In addition to the standard contents, the notice under subsection (9) must state—
 - (a) that members can write for a copy of the statement of proposals for achieving the purpose of administration; and
 - (b) the address to which to write.
- (11) This notice must be published as soon as reasonably practicable after the administrator of the Company sends his statement of proposals to the Company's creditors but no later than eight (8) weeks (or such other period as may be agreed by the creditors or as the Court may order) from the date that the Company entered administration.

58. Limited disclosure of statement of proposals

- (1) Where the administrator of a Company thinks that it would prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Section 57(1)(h) and 57(1)(i) (*Administrator's statement of proposals*) to be disclosed, the administrator of the Company may apply to the Court for an order of limited disclosure in respect of any specified part of the statement under this Section.

- (2) The Court may, on such application, order that some or all of the specified part of the statement must not be sent to the Registrar or to creditors or members of the Company as otherwise required by Section 56(5) (*Administrator's proposals*).
- (3) The administrator of a Company must as soon as reasonably practicable send to the persons specified in Section 56(5) (*Administrator's proposals*) the statement under Section 56 (*Administrator's proposals*) (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.
- (4) The administrator of the Company must also send a copy of the order to the Registrar.
- (5) A creditor who seeks disclosure of a part of a statement under Section 56 (*Administrator's proposals*) in relation to which an order has been made under this Section may apply to the Court for an order that the administrator of the Company disclose it. The application must be supported by written evidence in the form of a witness statement.
- (6) The applicant must give the administrator of the Company notice of the application at least three (3) business days before the hearing.
- (7) The Court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.
- (8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator of the Company must, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (9) The administrator of a Company must, as soon as reasonably practicable after the making of an order under subsection (8), send to the persons specified in Section 56(5) (*Administrator's proposals*) a copy of the statement under Section 56 (*Administrator's proposals*) to the extent provided by the order.
- (10) The provisions of the ADGM Court Procedure Rules relating to disclosure and inspection of documents do not apply to an application under this Section.

59. Creditors' meetings

In this Part 1 (*Administration*) "**creditors' meeting**" means a meeting of creditors of a Company summoned by the administrator of the Company in accordance with Schedule 6 (*Meetings and Correspondence*).

60. Creditors' meetings generally

Creditors' meetings shall be conducted in accordance with Schedule 6 (*Meetings and Correspondence*).

61. Requirement for initial creditors' meeting

- (1) Each copy of an administrator's statement of proposals sent to a creditor under Section 56(5)(b) (*Administrator's proposals*) must be accompanied by an invitation to a creditors' meeting (an "**initial creditors' meeting**").
- (2) The date set for an initial creditors' meeting must be—
 - (a) as soon as is reasonably practicable after the Company enters administration; and

- (b) in any event, within the period of ten (10) weeks beginning with the date on which the Company enters administration.
- (3) An administrator of the Company shall present a copy of his statement of proposals to an initial creditors' meeting.
- (4) A period specified in this Section may be varied in accordance with Section 151 (*Extension of time limit*).
- (5) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with a requirement of this Section.
- (6) Subsection (1) shall not apply where the statement of proposals states that the administrator of the Company thinks—
 - (a) that the Company has sufficient property to enable each creditor of the Company to be paid in full;
 - (b) that the Company has insufficient property to enable a distribution to be made to unsecured creditors; or
 - (c) that neither of the objectives specified in Section 2(1)(a) and (b) (*Purpose of administration*) can be achieved.
- (7) But the administrator of a Company shall summon an initial creditors' meeting if it is requested by creditors of the Company whose debts amount to at least ten (10)% of the total debts of the Company.
- (8) A meeting requested under subsection (7) must be summoned for a date in the period prescribed by Schedule 6.

62. Meeting requisitioned by creditors

The request for a creditors' meeting under Section 61(7) (*Requirement for initial creditors' meeting*) or Section 71(1) (*Further creditors' meetings*) or a meeting of creditors under Section 90 (*Meeting of creditors to consider variation or termination*) shall contain the information prescribed by Schedule 6 and be delivered in accordance with paragraph 13 (*Requisition of Meetings*) of Schedule 6 (*Meetings and Correspondence*). A request for an initial creditors' meeting must be made within eight (8) business days of the date on which the statement of proposals of the administrator of the Company is sent out.

63. Correspondence

- (1) Anything which is required or permitted by or under this Part to be done at a creditors' meeting or a meeting of creditors may be done by correspondence between the administrator and creditors—
 - (a) in accordance with these Regulations (including Schedule 6 (*Meetings and Correspondence*)); and
 - (b) subject to any prescribed condition.
- (2) A reference in this Part to anything done at a creditors' meeting or a meeting of creditors includes a reference to anything done in the course of correspondence in reliance on subsection (1).
- (3) A requirement to hold a creditors' meeting or a meeting of creditors is satisfied by conducting correspondence in accordance with this Section.

64. Business and result of initial creditors' meeting

- (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
 - (a) approve them without modification; or
 - (b) approve them with modification to which the administrator of the Company consents.
- (2) Subject to subsection (1), the initial creditors' meeting may resolve that the Company execute a Deed of Company Arrangement specified in the resolution (even if it differs from the proposed Deed of Company Arrangement, details of which were included in the statement of proposals of the administrator of the Company).
- (3) After the conclusion of an initial creditors' meeting the administrator of the Company shall as soon as is reasonably practicable report any decision taken to—
 - (a) the Court;
 - (b) the Registrar; and
 - (c) such other persons as may be prescribed.
- (4) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with subsection (3).

65. Revision of administrator's proposals

- (1) This Section applies where—
 - (a) the proposals of an administrator of a Company have been approved (with or without modification) at an initial creditors' meeting;
 - (b) he proposes a revision to the proposals; and
 - (c) he thinks that the proposed revision is substantial.
- (2) The administrator of the Company shall—
 - (a) summon a creditors' meeting;
 - (b) send a statement including the information specified by Section 66 of the proposed revision with the notice of the meeting sent to each creditor who is not an opted-out creditor;
 - (c) send a copy of the statement, within five (5) business days of sending out the statement in accordance with paragraph (b), to each member of the Company of whose address he is aware; and
 - (d) present a copy of the statement to the meeting.
- (3) The administrator of a Company shall be taken to have complied with subsection (2)(c) if he publishes (in such a manner as he thinks fit) a notice undertaking to provide a copy of the statement free of charge to any member of the Company who applies in writing to a specified address.
- (4) A notice under subsection (3) must be published—
 - (a) in the prescribed manner; and

- (b) within the prescribed period.
- (5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
 - (a) approve it without modification; or
 - (b) approve it with modification to which the administrator of the Company consents.
- (6) Subject to subsection (5), the creditors' meeting may resolve that the Company execute a Deed of Company Arrangement specified in the resolution (even if it differs from the proposed Deed of Company Arrangement, details of which were included in the statement of revised proposals of the administrator of the Company).
- (7) After the conclusion of a creditors' meeting the administrator of the Company shall as soon as is reasonably practicable report any decision taken to—
 - (a) the Court;
 - (b) the Registrar; and
 - (c) such other persons as may be prescribed.
- (8) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with subsection (7).

66. Contents of the administrator's revised proposals

- (1) The statement of revised proposals shall include—
 - (a) the relevant Court reference number;
 - (b) the full name, registered address, registered number and any other trading names of the Company;
 - (c) details relating to his appointment as administrator of the Company, including the date of appointment and the person making the administration application or appointment;
 - (d) the names of the Directors and secretary of the Company and details of any shareholdings in the Company they may have;
 - (e) a summary of the initial proposals and the reason(s) for proposing a revision;
 - (f) details of the proposed revision including details of the assessment (by the administrator of the Company) of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
 - (g) if the proposed revision includes a proposal for a Deed of Company Arrangement, the matters described at Section 56(4) (*Administrator's proposals*);
 - (h) where a proposed revision relates to the ending of the administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the Company—
 - (i) details of the proposed liquidator; and

- (ii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with Section 122(6)(a) (*Moving to creditors' voluntary liquidation*) and Section 123(2)(b) (*Moving to creditors' voluntary liquidation*); and
- (i) any other information that the administrator of the Company thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

67. Failure to obtain approval of administrator's proposals

- (1) This Section applies where an administrator of a Company reports to the Court that—
 - (a) an initial creditors' meeting has failed to approve his proposals presented to it; or
 - (b) a creditors' meeting has failed to approve a revision of his proposals presented to it.
- (2) The Court may—
 - (a) provide that the appointment of an administrator of a Company shall cease to have effect from a specified time;
 - (b) adjourn the hearing conditionally or unconditionally;
 - (c) make an interim order;
 - (d) make an order on a petition for winding-up suspended by virtue of Section 42(1)(b) (*Dismissal of pending winding-up petition*); and/or
 - (e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

68. Notice to creditors

- (1) As soon as reasonably practicable after the conclusion of a creditors' meeting to consider his proposals or revised proposals, the administrator of a Company shall—
 - (a) send notice in the form prescribed by Schedule 1 of the result of the meeting to every creditor and to every other person who received a copy of the original proposals;
 - (b) attach a copy of the proposals considered at the meeting to the notice sent to each creditor who did not receive notice of the meeting but of whose claim the administrator of the Company has subsequently become aware; and
 - (c) file with the Court a copy of the proposals considered at the meeting and notice of the result of the meeting.

69. Reports to creditors

- (1) "**Progress report**" means a report which includes—
 - (a) details of the relevant Court reference number;
 - (b) full details of the Company's name, address of registered office and registered number;
 - (c) full details of the name, address and date of appointment of the administrator of the Company and name and address of appointor, including any changes in Office-holder, and, in the case of joint administrators of a Company, their

functions as set out in the statement made for the purposes of Section 145(2) (*Joint administrators*);

- (d) details of any extensions to the initial period of appointment;
- (e) details of the basis fixed for the remuneration of the administrator of the Company under Section 109 (*Fixing of administrator's remuneration*) and Schedule 12 (*Remuneration*) (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- (f) if the basis of remuneration has been fixed, a statement of—
 - (i) the remuneration charged by the administrator of the Company during the period of the report (subject to subsection (3)); and
 - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the administrator of the Company during the periods covered by the previous reports (subject to subsection (3)), together with a description of the things done by the administrator of the Company during those periods in respect of which the remuneration was charged,

irrespective in either case of whether payment was made in respect of that remuneration during the period of the report;

- (g) a statement of the expenses incurred by the administrator of the Company during the period of the report, irrespective of whether payment was made in respect of them during that period;
 - (h) details of progress during the period of the report, including a receipts and payments account (as detailed in subsection (2));
 - (i) details of any assets that remain to be realised;
 - (j) a statement of the creditors' right to request information under Section 70 (*Creditors' request for further information*) and their right to challenge the remuneration and expenses of the administrator of the Company under paragraph 9 of Schedule 12 (*Remuneration*); and
 - (k) any other relevant information for the creditors.
- (2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report.
 - (3) Where the basis for the remuneration is a set amount under Section 109 (*Fixing of an administrator's remuneration*) and Schedule 12 (*Remuneration*), it may be shown as that amount without any apportionment to the period of the report.
 - (4) Where the administrator of a Company has made a statement of pre-administration costs under Section 57(1)(k) (*Administrator's Statement of Proposals*)—
 - (a) if they are approved under Section 108 (*Pre-administration costs*), the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
 - (b) each successive report, so long as any of the costs remain unapproved, must include a statement either—
 - (i) of any steps taken to get approval; or

- (ii) that the administrator of the Company has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator of the Company of that insolvency practitioner's decision, not to seek approval.
- (5) The progress report must, except where subsection (6) or (7) applies, cover the period of six (6) months commencing on the date on which the Company entered administration and every subsequent period of six (6) months.
- (6) The period to be covered by a progress report ends on the date when an administrator of a Company ceases to act, and the period to be covered by each subsequent progress report is each successive period of six (6) months beginning immediately after that date (subject to the further application of this subsection when another administrator of the Company ceases to act).
- (7) The sending of a progress report to creditors under Section 118 (*Application for extension of administration*) also satisfies subsection (5) or (6) in respect of the period covered by that report; and the period to be covered by each subsequent progress report under this Section is each successive period of six (6) months beginning with the end of the period covered by the report under Section 118 (*Application for extension of administration*).
- (8) The administrator of a Company must, within one (1) month of the end of the period covered by the report, send—
 - (a) a copy to the creditors attached to notice in the form prescribed by Schedule 1; and
 - (b) a copy to the Registrar,
 but this subsection does not apply when the period covered by the report is that of a final progress report under Section 111 (*Final progress reports*).
- (9) The Court may, on the application of the administrator of a Company, extend the period of one (1) month mentioned in subsection (8), or make such other order in respect of the content of the report as it thinks just.
- (10) If the administrator of a Company makes default in complying with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

70. Creditors' request for further information

- (1) If—
 - (a) within twenty-one (21) days of receipt of a progress report under Section 69 (*Reports to creditors*)—
 - (i) a secured creditor; or
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question); or
 - (b) with the permission of the Court upon an application made within that period of twenty-one (21) days, any unsecured creditor,

makes a request in writing to the administrator of the Company for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by Section 69(1)(f) and (g) (*Reports to creditors*), the administrator

of the Company must, within fourteen (14) days of receipt of the request, comply with subsection (2).

- (2) The administrator of a Company complies with subsection (1) by either—
- (a) providing all of the information asked for; or
 - (b) so far as the administrator of the Company considers that—
 - (i) the time or cost of preparation of the information would be excessive;
 - (ii) disclosure of the information would be prejudicial to the conduct of the administration or might reasonably be expected to lead to violence against any person; or
 - (iii) the administrator of the Company is subject to an obligation of confidentiality in respect of the information,giving reasons for not providing all of the information.
- (3) Any creditor, who need not be the same as the creditor who requested further information under subsection (1), may apply to the Court within twenty-one (21) days of—
- (a) the giving by the administrator of the Company of reasons for not providing all of the information asked for; or
 - (b) the expiry of the fourteen (14) days provided for in subsection (1),
- and the Court may make such order as it thinks just.
- (4) Without prejudice to the generality of subsection (3), the order of the Court under that subsection may extend the period of eight (8) weeks provided for in paragraph 9(3) (*Creditors' or members' claim that remuneration is, or other expenses are, excessive*) of Schedule 12 (*Remuneration*) by such further period as the Court thinks just.

71. Further creditors' meetings

- (1) The administrator of a Company shall summon a creditors' meeting if—
- (a) it is requested in the manner prescribed by Schedule 6 by creditors of the Company whose debts amount to at least ten (10)% of the total debts of the Company; or
 - (b) he is directed by the Court to summon a creditors' meeting.
- (2) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to summon a creditors' meeting as required by this Section.

72. Creditors' committee

- (1) A creditors' meeting may establish a creditors' committee.
- (2) If such a creditors' committee is established—
- (a) the relevant provisions of Schedule 7 (*Creditors' Committees*) shall apply; and
 - (b) the creditors' committee may, on giving not less than seven (7) days' notice, require the administrator of a Company to attend before it at any reasonable

time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Chapter 8 - Deed of Company Arrangement

73. Effect of creditors' resolution

- (1) This Section applies where, at a meeting convened pursuant to Section 61 (*Requirement for initial creditors' meeting*) or Section 65(2) (*Revision of administrator's proposals*), a Company's creditors resolve that the Company execute a Deed of Company Arrangement.
- (2) The administrator of the Company is to be the administrator of the Deed of Company Arrangement unless the creditors, by resolution passed at the meeting, appoint someone else to be administrator of the Deed of Company Arrangement.
- (3) The administrator of the Company must prepare an instrument setting out the terms of the Deed of Company Arrangement.
- (4) The instrument must also specify the following—
 - (a) the administrator of the Deed of Company Arrangement;
 - (b) the property of the Company (whether or not already owned by the Company when it executes the Deed of Company Arrangement) that is to be available to pay creditors' claims;
 - (c) the nature and duration of any moratorium period for which the Deed of Company Arrangement provides;
 - (d) to what extent the Company is to be released from its debts;
 - (e) the conditions (if any) for the Deed of Company Arrangement to come into operation;
 - (f) the conditions (if any) for the Deed of Company Arrangement to continue in operation;
 - (g) the circumstances in which the Deed of Company Arrangement terminates;
 - (h) the order in which proceeds of realising the property referred to in paragraph (b) are to be distributed among creditors bound by the Deed of Company Arrangement; and
 - (i) the day (not later than the day when the administration began) on or before which claims must have arisen if they are to be admissible under the Deed of Company Arrangement.
- (5) The instrument is taken to include the prescribed provisions, except so far as it provides otherwise.

74. Execution of Deed of Company Arrangement

- (1) This Section applies where an instrument is prepared under Section 73 (*Effect of creditors' resolution*).
- (2) The Company must execute the instrument within—
 - (a) fifteen (15) business days after the end of the meeting of creditors; or

- (b) such further period as the Court allows on an application made within those fifteen (15) business days.
- (3) The proposed administrator of the Deed of Company Arrangement must execute the instrument before, or as soon as practicable after, the Company executes it.
- (4) When executed by both the Company and the proposed administrator, the instrument becomes a Deed of Company Arrangement.
- (5) As soon as practicable after a Deed of Company Arrangement is executed, the administrator of the Deed of Company Arrangement must—
 - (a) send to each creditor of the Company a written notice of the execution of the Deed of Company Arrangement; and
 - (b) send to the Registrar a copy of the Deed of Company Arrangement.
- (6) If a Company contravenes subsection (2), the proposed administrator of the Deed of Company Arrangement must, as soon as practicable thereafter—
 - (a) send to the Registrar a notice that the Company has failed to execute the instrument within the required period; and
 - (b) send such a notice to the Company's creditors.

75. Creditor etc. not to act inconsistently with deed before its execution

- (1) Where, at a meeting convened pursuant to Section 61 (*Requirement for initial creditors meeting*) or Section 65(2) (*Revision of administrator's proposals*), a Company's creditors resolve that the Company execute a Deed of Company Arrangement, this Section applies until—
 - (a) the Deed of Company Arrangement is executed by both the Company and the administrator; or
 - (b) the period within which Section 74(2) (*Execution of Deed of Company Arrangement*) requires the Company to execute the Deed of Company Arrangement ends,
 whichever happens sooner.
- (2) In so far as a person would be bound by the Deed of Company Arrangement if it had already been so executed, the person—
 - (a) must not do anything inconsistent with the Deed of Company Arrangement, except with the leave of the Court; and
 - (b) is subject to Section 78 (*Protection of Company's property*).

76. Effect of Deed of Company Arrangement on creditors

- (1) A Deed of Company Arrangement binds all creditors of the Company, so far as concerns claims arising on or before the day specified in the Deed of Company Arrangement under Section 73(4)(i) (*Effect of creditors' resolution*).

- (2) Subsection (1) does not prevent a secured creditor from realising or otherwise dealing with security, except so far as—
 - (a) the Deed of Company Arrangement so provides in relation to a secured creditor who voted in favour of the resolution of creditors because of which the Company executed the Deed of Company Arrangement; or
 - (b) the Court orders under Section 79(3) (*Court may limit rights*).
- (3) Subsection (1) does not affect a right that an owner or lessor of property has in relation to that property, except so far as—
 - (a) the Deed of Company Arrangement so provides in relation to an owner or lessor of property who voted in favour of the resolution of creditors because of which the Company executed the Deed of Company Arrangement; or
 - (b) the Court orders under Section 79(4) (*Court may limit rights*).
- (4) Section 117 (*The members of a company*) of the Companies Regulations 2020 does not prevent a creditor of the Company from becoming a member of the Company as a result of the Deed of Company Arrangement requiring the creditor to accept an offer of shares in the Company.

77. Giving priority to preferential creditors

A Deed of Company Arrangement must contain a provision to the effect that, for the purposes of the application by the administrator of the property of the Company coming under his or her control under the Deed of Company Arrangement, any preferential creditors will be entitled to a priority at least equal to what they would have been entitled if the property were applied in accordance with Section 227 (*Preferential Debts*).

78. Protection of Company's property

- (1) Until a Deed of Company Arrangement terminates, this Section applies to a person bound by the Deed of Company Arrangement.
- (2) The person cannot—
 - (a) make an application for an order to wind up the Company; or
 - (b) proceed with such an application made before the Deed of Company Arrangement became binding on the person.
- (3) The person cannot—
 - (a) begin or proceed with a proceeding against the Company or in relation to any of its property; or
 - (b) begin or proceed with enforcement process in relation to property of the Company;
 except—
 - (c) with the leave of the Court; and
 - (d) in accordance with such terms (if any) as the Court imposes.
- (4) In subsection (3)—

“property” of a Company includes any property used or occupied by, or in the possession of the Company.

79. Court may limit rights

- (1) This Section applies where—
 - (a) at a meeting convened pursuant to Section 61 (*Requirement for initial creditors' meeting*) or 65(2) (*Revision of administrator's proposals*), a Company's creditors have resolved that the Company execute a Deed of Company Arrangement; or
 - (b) a Company has executed such a Deed of Company Arrangement.
- (2) The Court may order a secured creditor of the Company not to realise or otherwise deal with his security, except as permitted by the order.
- (3) The Court may only make an order under subsection (2) if satisfied that—
 - (a) for the creditor to realise or otherwise deal with the security would have a material adverse effect on achieving the purposes of the Deed of Company Arrangement; and
 - (b) having regard to—
 - (i) the terms of the Deed of Company Arrangement;
 - (ii) the terms of the order; and
 - (iii) any other relevant matter,the creditor's interests will be adequately protected.
- (4) The Court may order the owner or lessor of property that is used or occupied by, or is in the possession of, the Company not to take possession of the property or otherwise recover it.
- (5) The Court may only make an order under subsection (4) if satisfied that—
 - (a) for the owner or lessor to take possession of the property or otherwise recover it would have a material adverse effect on achieving the purposes of the Deed of Company Arrangement; and
 - (b) having regard to—
 - (i) the terms of the Deed of Company Arrangement;
 - (ii) the terms of the order; and
 - (iii) any other relevant matter,the interests of the owner or lessor will be adequately protected.
- (6) An order under this Section may be made subject to conditions.
- (7) An order under this Section may only be made on the application of—
 - (a) if subsection (1)(a) applies, the administrator of the Company; or
 - (b) if subsection (1)(b) applies, the Deed of Company Arrangement's administrator.
- (8) For the purposes of subsections (3) and (5), whether an action has a "material adverse effect" on achieving the purposes of the Deed of Company Arrangement shall be

assessed in light of all of the circumstances subsisting at the time that the Court comes to consider the issue.

80. Effect of Deed of Company Arrangement on Company, officers and members

A Deed of Company Arrangement also binds—

- (a) the Company;
- (b) its officers and members; and
- (c) the administrator of the Deed of Company Arrangement.

81. Transfer of shares

- (1) The administrator of a Deed of Company Arrangement may transfer shares in the Company if the administrator has obtained—
 - (a) the written consent of the owner of the shares; or
 - (b) the leave of the Court.
- (2) A person is not entitled to oppose an application for leave under subsection (1) unless the person is—
 - (a) a member of the Company;
 - (b) a creditor of the Company;
 - (c) any other interested person;
 - (d) the Financial Services Regulator; or
 - (e) the Registrar.
- (3) The Court may only give leave under subsection (1) if it is satisfied that the transfer would not unfairly prejudice the interests of members of the Company.

82. Extent of release of Company's debts

A Deed of Company arrangement releases the Company from a debt only in so far as—

- (a) the Deed of Company Arrangement provides for the release; and
- (b) the creditor concerned is bound by the Deed of Company Arrangement.

83. Guarantees and indemnities

Section 82 (*Extent of release of Company's debts*) does not affect a creditor's rights under a guarantee or indemnity from a person other than the Company.

84. Variation of Deed of Company Arrangement by creditors

A Deed of Company Arrangement may be varied by a resolution passed at a meeting of the creditors of the Company convened under Section 90 (*Meeting of creditors to consider variation or termination*), but only if the variation is not materially different from a proposed variation set out in the notice of the meeting.

85. Court may cancel variation

- (1) Where a Deed of Company Arrangement is varied under Section 84 (*Variation of Deed of Company Arrangement by creditors*), a creditor of the Company may apply to the Court for an order cancelling the variation.
- (2) On an application, the Court—
 - (a) may make an order cancelling the variation, or confirming it, either wholly or in part, on such conditions (if any) as the order specifies; and
 - (b) may make such other orders as it thinks appropriate.

86. When Deed of Company Arrangement terminates

A Deed of Company Arrangement terminates when—

- (a) the Court makes under Section 88 (*When Court may terminate Deed of Company Arrangement*) an order terminating the Deed of Company Arrangement;
- (b) subject to Section 87 (*When creditors may terminate Deed of Company Arrangement*), the Company's creditors pass a resolution terminating the Deed of Company Arrangement at a meeting that was convened under Section 90 (*Meeting of creditors to consider variation or termination*) by a notice setting out the proposed resolution;
- (c) if the Deed of Company Arrangement specifies circumstances in which it is to terminate, those circumstances exist; or
- (d) the administrator of the Deed of Company Arrangement executes a notice of termination of the Deed of Company Arrangement in accordance with Section 91 (*Notice of termination of Deed of Company Arrangement*);

whichever happens first.

87. When creditors may terminate Deed of Company Arrangement

- (1) The creditors are not entitled to pass a resolution under Section 86(b) (*When Deed of Company Arrangement terminates*) unless—
 - (a) there has been a breach of the Deed of Company Arrangement; and
 - (b) the breach has not been rectified before the resolution is passed.
- (2) When a Deed of Company Arrangement terminates in accordance with subsection (1), the administrator of the Deed of Company Arrangement must—
 - (a) send to the Registrar a notice of the termination; and
 - (b) send such a notice to each of the Company's creditors other than opted-out creditors.

88. When Court may terminate Deed of Company Arrangement

- (1) The Court may make an order terminating a Deed of Company Arrangement if satisfied that—
- (a) information about the Company's business, property, affairs or financial circumstances that—
 - (i) was false or misleading; and
 - (ii) can reasonably be expected to have been material to creditors of the Company in deciding whether to vote in favour of the resolution that the Company execute the Deed of Company Arrangement,was given to the administrator of the Company or to such creditors; or
 - (b) such information was contained in a report or statement under Section 61(3) (*Requirement for initial creditors' meetings*) or 65(2) (*Revision of administrator's proposals*) that accompanied a notice of the meeting at which the resolution was passed; or
 - (c) there was an omission from such a report or statement and the omission can reasonably be expected to have been material to such creditors in so deciding; or
 - (d) there has been a material breach of the Deed of Company Arrangement by a person bound by the Deed of Company Arrangement; or
 - (e) effect cannot be given to the Deed of Company Arrangement without injustice or undue delay; or
 - (f) the Deed of Company Arrangement or a provision of it is, an act or omission done or made under the Deed of Company Arrangement was, or an act or omission proposed to be so done or made would be—
 - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more such creditors; or
 - (ii) contrary to the interests of the creditors of the Company as a whole; or
 - (g) the Deed of Company Arrangement should be terminated for some other reason.
- (2) An order may be made on the application of—
- (a) a creditor of the Company;
 - (b) the Company;
 - (c) the Financial Services Regulator; or
 - (d) any other interested person.

89. Creditors may terminate Deed of Company Arrangement and resolve that Company be wound up

Where—

- (a) at a meeting convened under Section 90 (*Meeting of creditors to consider variation or termination*), the Company's creditors pass a resolution terminating the Deed of Company Arrangement; and

- (b) the notice of the meeting sets out a proposed resolution that the Company be wound up,

the creditors may also resolve at the meeting that the Company be wound-up.

90. Meeting of creditors to consider variation or termination

- (1) The administrator of a Deed of Company Arrangement—
 - (a) may at any time convene a meeting of the Company's creditors; and
 - (b) must convene such a meeting if so requested in writing by creditors the value of whose claims against the Company is not less than ten (10)% of the value of all the creditors' claims against the Company.
- (2) The administrator of the Deed of Company Arrangement must convene the meeting by giving written notice of the meeting—
 - (a) to as many of the Company's creditors (other than opted-out creditors) as reasonably practicable; and
 - (b) at least five (5) business days before the meeting.
- (3) The notice given to a creditor under subsection (2) must—
 - (a) set out each resolution (if any) under Section 84 (*Variation of Deed of Company Arrangement by creditors*) or Section 86(b) (*When Deed of Company Arrangement terminates*) that the administrator of the Deed of Company Arrangement proposes that the meeting vote on; and
 - (b) if the meeting is convened under subsection (1)(b), set out each proposed resolution under Section 84 (*Variation of Deed of Company Arrangement by creditors*) or Section 86(b) (*When Deed of Company Arrangement terminates*) that is set out in the request.
- (4) At a meeting convened under this Section, the administrator of the Deed of Company Arrangement is to preside.
- (5) A meeting convened under this Section may be adjourned from time to time.
- (6) The relevant provisions of Schedule 6 (*Meetings and Correspondence*) shall apply to the convening and conduct of a meeting of creditors convened under this Section, subject to the other provisions of this Chapter.

91. Notice of termination of Deed of Company Arrangement

- (1) If a Company is subject to a Deed of Company Arrangement, and—
 - (a) the administrator of the Deed of Company Arrangement has applied all of the proceeds of the realisation of the assets available for the payment of creditors; or
 - (b) the administrator of the Deed of Company Arrangement has paid to the creditors—
 - (i) the sum of 100 cents in the dollar; or
 - (ii) any lesser sum determined by the creditors at a general meeting; or

- (c) all of the following conditions are satisfied—
 - (i) the Company's obligations under the Deed of Company Arrangement have been fulfilled;
 - (ii) the obligations of any other party to the Deed of Company Arrangement have been fulfilled; and
 - (iii) creditors' claims under the Deed of Company Arrangement have been dealt with in accordance with the Deed of Company Arrangement,

the administrator of the Deed of Company Arrangement must—

- (d) certify to that effect in writing; and
 - (e) within twenty-eight (28) days, lodge with the Registrar a notice of termination of the Deed of Company Arrangement.
- (2) The notice of termination must be in the form prescribed by Schedule 1.

92. When Court may void or validate Deed of Company Arrangement

- (1) Where there is doubt, on a specific ground, whether a Deed of Company Arrangement was entered into in accordance with this Chapter or complies with this Chapter, the administrator of the Deed of Company Arrangement, a member or creditor of the Company, or the Registrar, may apply to the Court for an order under this Section.
- (2) On an application, the Court may make an order declaring the Deed of Company Arrangement, or a provision of it, to be void or not to be void, as the case requires, on the ground specified in the application or some other ground.
- (3) On an application, the Court may declare the Deed of Company Arrangement, or a provision of it, to be valid, despite a breach of a provision of this Chapter, if the Court is satisfied that—
 - (a) the provision was substantially complied with; and
 - (b) no injustice will result for anyone bound by the Deed of Company Arrangement if the breach is disregarded.
- (4) Where the Court declares a provision of a Deed of Company Arrangement to be void, the Court may by order vary the Deed of Company Arrangement, but only with the consent of the administrator of the Deed of Company Arrangement.

93. Effect of termination or avoidance

The termination or avoidance, in whole or in part, of a Deed of Company Arrangement does not affect the previous operation of the Deed of Company Arrangement.

94. Deed progress reports

- (1) The administrator of a Deed of Company Arrangement must, within one month after—
 - (a) the end of the 6-month period beginning on the date of his appointment; and
 - (b) the end of each subsequent 6-month period during which he is the administrator of the Deed of Company Arrangement;
 publish a progress report that—
 - (c) contains the information prescribed by paragraph 53 of Schedule 1;

- (d) is verified by a written statement;
 - (e) shows his receipts and payments during the relevant 6-month period; and
 - (f) in the case of the second or subsequent progress reports published under this subsection, also shows the aggregate amount of receipts and payments during all preceding 6-month periods since his appointment.
- (2) A person who ceases to be the administrator of a Deed of Company Arrangement must, within one month after the cessation, publish a final progress report that—
- (a) contains the information prescribed by paragraph 53 of Schedule 1;
 - (b) is verified by a written statement;
 - (c) if he has previously been required to publish a progress report under subsection (1), shows his receipts and payments during the period—
 - (i) beginning at the end of the 6-month period to which the most recent progress report under subsection (1) related; and
 - (ii) ending at the cessation;
 - (d) if he has previously been required to publish a progress report under subsection (1), also shows the aggregate amount of receipts and payments during all previous 6-month periods since his appointment; and
 - (e) if he has not previously been required to publish a progress report under subsection (1), shows his receipts and payments during the period beginning on—
 - (i) the date of his appointment; and
 - (ii) ending at the cessation.
- (3) If a report is published under subsection (1) or (2), the Registrar may cause the progress report to be audited by a registered company auditor.
- (4) The auditor must prepare a report on the progress report.
- (5) For the purposes of the audit under subsection (3), the administrator or former administrator must give the auditor such books and information as the auditor requires.
- (6) If the Registrar causes a progress report to be audited under subsection (3)—
- (a) the Registrar must give the administrator or former administrator a copy of the report by the auditor; and
 - (b) Section 470 (*Auditor's general right to information*) of the Companies Regulations 2020 applies in relation to the report prepared by the auditor as if it were a document required to be published.
- (7) The costs of an audit under this Section are to be fixed by the Registrar, and are payable by the Company.

Chapter 9 - Functions of Administrator

95. General powers

- (1) The administrator of a Company may do anything necessary or expedient for the management of the affairs, business and property of the Company.

- (2) A provision of this Part 1 (*Administration*) which expressly permits the administrator of a Company to do a specified thing is without prejudice to the generality of subsection (1).
- (3) A person who deals with the administrator of a Company in good faith and for value need not inquire whether the administrator is acting within his powers.
- (4) The administrator of a Company has the powers specified in Schedule 2 (*Powers of the Administrator*).
- (5) The administrator of a Company—
 - (a) may remove a Director of the Company; and
 - (b) may appoint a Director of the Company (whether or not to fill a vacancy).
- (6) The administrator of a Company or of a Deed of Company Arrangement may call a meeting of members or creditors of the Company.
- (7) The administrator of a Company or of a Deed of Company Arrangement may apply to the Court for directions in connection with his functions. The administrator of a Deed of Company Arrangement may also apply to the Court for directions about a matter arising in connection with the operation of, or giving effect to, the Deed of Company Arrangement.
- (8) A Company in administration or an officer of a Company in administration may not exercise a management power without the consent of the administrator of the Company.
- (9) For the purpose of subsection (8)—
 - (a) “**management power**” means a power which could be exercised so as to interfere with the exercise of the administrator’s powers;
 - (b) it is immaterial whether the power is conferred by an enactment or an instrument; and
 - (c) consent may be general or specific.
- (10) The Board may by rules prohibit or restrict the disposal, hiring out or sale of property of a Company by an administrator to a person who is or was a particular kind of Connected Person of a Company, in such circumstances and subject to such conditions and requirements as may be prescribed, and the powers of an administrator under subsection (4) shall be subject to such prohibition or restriction.

96. Distribution

- (1) The administrator of a Company may make a distribution to a creditor of the Company. Schedule 5 (*Proofs and Distribution*) shall apply to distributions made or proposed to be made by the administrator of a Company to any class of creditors other than secured creditors.
- (2) Section 227 (*Preferential Debts*) shall apply in relation to a distribution under this Section as it applies in relation to a winding-up with references in that Section to “expenses” being instead to expenses properly incurred in an administration under this Part 1 (*Administration*).
- (3) A payment may not be made by way of distribution under this Section to a creditor of the Company who is neither secured nor preferential unless the Court gives permission.

- (4) The administrator of a Company may make a payment otherwise than in accordance with subsections (1) to (3) or paragraph (13) of Schedule 2 (*Powers of the Administrator*) if he thinks it likely to assist achievement of the purpose of administration.

97. General duties

- (1) The administrator of a Company shall on his appointment take custody or control of all the property to which he thinks the Company is entitled.
- (2) Subject to subsection (3), the administrator of a Company shall manage its affairs, business and property in accordance with—
- (a) any proposals approved under Section 64 (*Business and result of initial creditors' meeting*);
 - (b) any revision of those proposals which is made by him and which he does not consider substantial; and
 - (c) any revision of those proposals approved under Section 65 (*Revision of administrator's proposals*).
- (3) If the Court gives directions to the administrator of a Company in connection with any aspect of his management of the Company's affairs, business or property, the administrator of the Company shall comply with the directions.
- (4) The Court may give directions under subsection (3) only if—
- (a) no proposals have been approved under Section 64 (*Business and result of initial creditors' meeting*);
 - (b) the directions are consistent with any proposals or revision approved under Section 64 (*Business and result of initial creditors' meeting*) or Section 65 (*Revision of administrator's proposals*);
 - (c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under Section 64 (*Business and result of initial creditors' meeting*) or Section 65 (*Revision of administrator's proposals*); or
 - (d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under Section 64 (*Business and result of initial creditors' meeting*) or Section 65 (*Revision of administrator's proposals*).

98. Administrator as agent of Company

In exercising his functions under these Regulations the administrator of a Company acts as its agent.

99. Charged property: floating charge

- (1) The administrator of a Company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.
- (2) Where property is disposed of in reliance on subsection (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

- (3) In subsection (2) “**acquired property**” means property of the Company which directly or indirectly represents the property disposed of.

100. Charged property

- (1) The Court may by order enable the administrator of a Company or of a Deed of Company Arrangement to dispose of property which is subject to security (other than in the case of an administrator of a Company a floating charge) as if it were not subject to the security.
- (2) An order under subsection (1) may be made only—
- (a) on the application of the administrator of the Company or of a Deed of Company Arrangement; and
 - (b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration or the Deed of Company Arrangement in respect of the Company.
- (3) An order under this Section is subject to the condition that there be applied towards discharging the sums secured by the security—
- (a) the net proceeds of disposal of the property; and
 - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.
- (4) If an order under this Section relates to more than one security, application of money under subsection (3) shall be in the order of the priorities of the securities.
- (5) An administrator of a Company or of a Deed of Company Arrangement who makes a successful application for an order under this Section shall send a copy of the order to the Registrar before the end of the period of fourteen (14) days starting with the date of the order.
- (6) An administrator of a Company or of a Deed of Company Arrangement commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails to comply with subsection (5) without reasonable excuse.

101. Hire-purchase property

- (1) The Court may by order enable the administrator of a Company or of a Deed of Company Arrangement to dispose of goods which are in the possession of the Company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the Company.
- (2) An order under subsection (1) may be made only—
- (a) on the application of the administrator of the Company or of a Deed of Company Arrangement; and
 - (b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration or the Deed of Company Arrangement in respect of the Company.
- (3) An order under this Section is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—
- (a) the net proceeds of disposal of the goods; and

- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.
- (4) An administrator of a Company or of a Deed of Company Arrangement who makes a successful application for an order under this Section shall send a copy of the order to the Registrar before the end of the period of fourteen (14) days starting with the date of the order.
- (5) An administrator of a Company or of a Deed of Company Arrangement commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with subsection (4).

102. Disposal of charged property

- (1) The following applies where the administrator of a Company or of a Deed of Company Arrangement applies to the Court under Section 100 (*Charged property*) or Section 101 (*Hire-purchase property*) for authority to dispose of property of the Company which is subject to a security, or goods in the possession of the Company under a hire-purchase agreement.
- (2) The Court shall fix a venue for the hearing of the application, and the administrator of the Company or of a Deed of Company Arrangement shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.
- (3) If an order is made under Section 100 (*Charged property*) or Section 101 (*Hire-purchase property*), the order shall be filed on the eCourts Platform where it will be made available to the administrator.
- (4) The administrator shall send a copy of the sealed order to the person who is the holder of the security or owner under the agreement.
- (5) The administrator must send a copy of the sealed order to the Registrar.

103. Protection for secured or preferential creditor

- (1) A statement of proposals of an administrator of a Company under Section 56 (*Administrator's proposals*) may not include any action which—
 - (a) affects the right of a secured creditor of the Company to enforce his security;
 - (b) would result in a preferential debt of the Company being paid otherwise than in priority to its non-preferential debts; or
 - (c) would result in one preferential creditor of the Company being paid a smaller proportion of his debt than another.
- (2) Subsection (1) does not apply to—
 - (a) action to which the relevant creditor consents;
 - (b) a proposal for a compromise or arrangement to be sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations 2020; or
 - (c) a proposal for a Deed of Company Arrangement.
- (3) The reference to a statement of proposals in subsection (1) includes a reference to a statement as revised or modified.

104. Debts of insolvent Company to rank equally

Debts other than preferential debts rank equally between themselves in the administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

105. Challenge to administrator's conduct

- (1) A creditor or member of a Company in administration or subject to a Deed of Company Arrangement may apply to the Court claiming that—
 - (a) the administrator of the Company or of the Deed of Company Arrangement is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors); or
 - (b) the administrator of the Company or of the Deed of Company Arrangement proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) A creditor or member of a Company in administration or subject to a Deed of Company Arrangement may apply to the Court claiming that the administrator of the Company or of the Deed of Company Arrangement is not performing his functions as quickly or as efficiently as is reasonably practicable.
- (3) The Court may—
 - (a) grant relief;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order; and/or
 - (e) make any other order it thinks appropriate.
- (4) In particular, an order under this Section may—
 - (a) regulate the exercise by the administrator of his functions;
 - (b) require the administrator to do or not do a specified thing;
 - (c) require a creditors' meeting or meeting of creditors to be held for a specified purpose;
 - (d) provide for the appointment of an administrator to cease to have effect; and/or
 - (e) make consequential provision.
- (5) An order may be made on a claim under subsection (1) whether or not the action complained of—
 - (a) is within the powers of the administrator under these Regulations; or
 - (b) was taken in reliance on an order under Section 100 (*Charged property*) or Section 101 (*Hire-purchase property*).

- (6) An order may not be made under this Section if it would impede or prevent the implementation by the administrator of a Company of—
 - (a) a compromise or arrangement sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations 2020; or
 - (b) proposals or a revision approved under Section 64 (*Business and result of initial creditors' meeting*) or Section 65 (*Revision of administrator's proposals*) more than 28 days before the day on which the application for the order under this Section is made.

106. Misfeasance

- (1) The Court may examine the conduct of a person who—
 - (a) is or purports to be the administrator of a Company or of a Deed of Company Arrangement; or
 - (b) has been or has purported to be the administrator of a Company or of a Deed of Company Arrangement.
- (2) An examination under this Section may be held only on the application of—
 - (a) the administrator of the Company or of a Deed of Company Arrangement;
 - (b) the liquidator of the Company;
 - (c) a creditor of the Company; or
 - (d) a contributory of the Company.
- (3) An application under subsection (2) must allege that the administrator—
 - (a) has misapplied or retained money or other property of the Company;
 - (b) has become accountable for money or other property of the Company;
 - (c) has breached a fiduciary or other duty in relation to the Company; or
 - (d) has been guilty of misfeasance.
- (4) On an examination under this Section into a person's conduct the Court may order him—
 - (a) to repay, restore or account for money or property;
 - (b) to pay interest; and/or
 - (c) to contribute a sum to the Company's property by way of compensation for breach of duty or misfeasance.
- (5) In subsection (3) "**administrator**" includes a person who purports or has purported to be an administrator of a Company or of a Deed of Company Arrangement.
- (6) An application under subsection (2) may be made in respect of an administrator who has been discharged under Section 142 (*Vacation of office: discharge from liability*) only with the permission of the Court.

107. Expenses of the administration

- (1) The expenses of the administration are payable in the following order of priority—
 - (a) expenses properly incurred by the administrator of a Company in performing his functions in the administration of the Company;
 - (b) the cost of any security provided by the administrator of a Company in accordance with these Regulations;
 - (c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application and where the administrator of a Company was appointed otherwise than by order of the Court, any costs and expenses of the appointor in connection with the making of the appointment and the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator of the Company;
 - (d) any amount payable to a person employed or authorised, under Chapter 7 (*Process of Administration*) of this Part 1 (*Administration*), to assist in the preparation of a Statement of Affairs or statement of concurrence;
 - (e) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a Statement of Affairs or statement of concurrence;
 - (f) any necessary disbursements by the administrator of a Company in the course of the administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator of the Company under this Section, but not including any payment of taxes in circumstances referred to in subsection (i) below);
 - (g) the remuneration or emoluments of any person who has been employed by the administrator of a Company to perform any services for the Company, as required or authorised under these Regulations;
 - (h) the remuneration of the administrator of the Company the basis of which has been fixed under Section 109 (*Fixing of an administrator's remuneration*) and Schedule 12 (*Remuneration*) and unpaid pre-administration costs approved under Section 108 (*Pre-administration costs*); and
 - (i) the amount of any corporation tax or any similar tax applicable to Limited Liability Partnerships on chargeable gains accruing on the realisation of any asset of the Company (without regard to whether the realisation is effected by the administrator of a Company, a secured creditor, or a receiver or manager appointed to deal with a security).
- (2) The priorities laid down by subsection (1) are subject to the power of the Court to make orders under subsection (3) where the property is insufficient to satisfy the liabilities.
- (3) The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the expenses incurred in the administration in such order of priority as the Court thinks just.
- (4) For the purposes of Section 143(3) (*Vacation of office: charges and liabilities*), the remuneration and expenses of a former administrator of the Company shall comprise all those items set out in subsection (1).

108. Pre-administration costs

- (1) Where the administrator of a Company has made a statement of pre-administration costs under Section 57(1)(k) (*Administrator's statement of proposals*) the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.
- (2) But if—
 - (a) there is no creditors' committee; or
 - (b) there is but it does not make the necessary determination; or
 - (c) it does do so but the administrator of the Company or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,subsection (3) applies.
- (3) When this subsection applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment shall be—
 - (a) by resolution of a creditors' meeting other than in a case falling in paragraph (b); or
 - (b) in a case where the administrator of the Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*)—
 - (i) by the approval of each secured creditor of the Company; or
 - (ii) if the administrator of the Company has made, or intends to make, a distribution to preferential creditors, by the approval of—
 - (a) each secured creditor of the Company; and
 - (b) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) The administrator of a Company must call a meeting of the creditors' committee or a creditors' meeting if so requested for the purposes of subsections (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator of the Company must give notice of the meeting within twenty-eight (28) days of receipt of the request.
- (5) If-
 - (a) there is no determination under subsection (1) or (3); or
 - (b) there is such a determination but the administrator of the Company or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

the administrator of the Company (where the fees were charged or expenses incurred by him) or other insolvency practitioner (where the fees were charged or expenses incurred by that insolvency practitioner) may apply to the Court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

- (6) Paragraphs 5(4), (5) and (7) (*Remuneration: recourse by administrator or liquidator to the Court*) of Schedule 12 (*Remuneration*) apply to an application under subsection (5) as they do to an application under paragraph 5(1) (*Remuneration: recourse by administrator or liquidator to the Court*) of Schedule 12 (*Remuneration*) (references to the administrator of the Company being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).
- (7) Where the administrator of a Company fails to call a meeting of the creditors' committee or a creditors' meeting in accordance with subsection (4), the other insolvency practitioner may apply to the Court for an order requiring the administrator of the Company to do so.

109. Fixing of an administrator's remuneration

An administrator is entitled to receive remuneration for his services as such. The relevant provisions of Schedule 12 (*Remuneration*) shall apply in the determination of the remuneration of an administrator.

Chapter 9A - Priority Financing

109A. Priority funding

- (1) An administrator may obtain unsecured credit and incur unsecured debt in the ordinary course of business, and any such credit or debt shall be payable as an expense of the administration in accordance with Section 143 (*Vacation of office: charges and liabilities*).
- (2) If an administrator is unable to obtain unsecured credit in accordance with subsection (1), the Court may, following an application by the administrator, permit for all purposes, irrespective of prior rights and prohibitions to the contrary, the obtaining of credit or the incurring of debt:
 - (a) with priority over any or all expenses of the administration;
 - (b) secured by a security interest on property of the insolvent estate that is not otherwise subject to a security interest; or
 - (c) secured by a security interest on property of the insolvent estate where:
 - (i) such property is already subject to a security interest; and
 - (ii) the new security interest ranks, as a matter of priority, below any existing security interest in respect of the same property.
- (3) The Court may, following an application by the administrator, permit for all purposes, irrespective of prior rights and prohibitions to the contrary, the obtaining of credit or the incurring of debt secured by a security interest on property of the insolvent estate where:
 - (a) such property is already subject to a security interest; and
 - (b) the new security interest ranks, as a matter of priority, equally with or above any existing security interest in respect of the same property,
 - only if:
 - (A) the administrator is unable to obtain such credit otherwise; and

- (B) there is adequate protection of the interest of the holder of the existing security interest on the property of the insolvent estate on which the security interest is proposed to be granted.

In any hearing under this subsection (3), the administrator has the burden of proof on the issue of adequate protection.

- (4) The reversal or modification on appeal of an order under this section to obtain credit or incur debt, or of a grant under this section of a priority or a security interest, does not affect the validity of any debt so incurred, or any priority or security interest so granted, to an entity that extended such credit or debt in good faith, whether or not such entity knew of the pendency of the appeal, unless such order and the incurring of such debt, or the granting of such priority or security interest, were stayed pending appeal.
- (5) Following an application to the Court by the administrator under subsection (2) or (3), the administrator shall, as soon as reasonably practicable after the making of such application, notify each known creditor of the Company that such application has been made or, if that is not practicable in the circumstances, publish a notice of the application on the Registrar's website and in an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market.
- (6) At a hearing of an application in respect of subsection (2) or (3), any of the following may appear to be represented:
 - (a) the administrator;
 - (b) any creditor which holds security over property to which the application relates; and
 - (c) with the permission of the Court, any other person who appears to have an interest justifying his appearance.

109B. Adequate protection

- (1) When adequate protection is required under Section 109A (*Priority funding*) of an interest of an entity in property, such adequate protection may be provided by:
 - (a) requiring the administrator to make a cash payment or periodic cash payments to such entity, to the extent that any grant of a security interest under Section 109A (*Priority funding*) results in a decrease in the value of such entity's interest in such property;
 - (b) providing to such entity an additional or replacement security interest to the extent that such grant results in a decrease in the value of such entity's interest in such property; or
 - (c) granting such other relief as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.
- (2) For the purposes of Section 109A (*Priority funding*) and without limiting the scope of Section 109B(1), adequate protection is provided if the Court is satisfied that the provision of credit or debt:
 - (a) would enable the administrator to achieve one of the purposes of the administration set out in Section 2(1)(a) or Section 2(1)(b); and
 - (b) the grant of the security interest referred to in Section 109A(3)(a) is likely to achieve a better result for each creditor which benefits from an existing security

interest over the same property than would likely be achieved if the new security interest was not granted.

Chapter 10 - Ending Administration

110. Automatic end of administration

- (1) The appointment of an administrator of a Company shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.
- (2) But—
 - (a) on the application of an administrator of a Company the Court may by order extend his term of office for a specified period; and
 - (b) the term of office of an administrator of a Company may be extended for a specified period not exceeding twelve (12) months by consent.
- (3) An order of the Court under this Section—
 - (a) may be made in respect of an administrator of a Company whose term of office has already been extended by order or by consent; but
 - (b) may not be made after the expiry of his term of office.
- (4) Where an order is made under this Section the administrator of a Company shall as soon as is reasonably practicable notify the Registrar.
- (5) An administrator of a Company who fails without reasonable excuse to comply with subsection (4) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (6) In subsection (2)(b) “**consent**” means consent of—
 - (a) each secured creditor of the Company; and
 - (b) if the Company has unsecured debts, creditors whose debts amount to more than 50% of the Company’s unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (7) But where the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors’ meeting*) “**consent**” means—
 - (a) consent of each secured creditor of the Company; or
 - (b) if the administrator of a Company thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (8) Consent for the purposes of subsection (2)(b) may be—
 - (a) written; or
 - (b) signified at a creditors’ meeting.

- (9) The term of office of an administrator of a Company—
 - (a) may be extended by consent only once;
 - (b) may not be extended by consent after extension by order of the Court; and
 - (c) may not be extended by consent after expiry.
- (10) Where the term of office of an administrator of a Company is extended by consent he shall as soon as is reasonably practicable—
 - (a) file notice of the extension with the Court; and
 - (b) notify the Registrar.
- (11) An administrator of a Company who fails without reasonable excuse to comply with subsection (10) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (12) Notwithstanding the other provisions of this Section, the appointment of an administrator of a Company which is in administration shall cease to have effect when a Deed of Company Arrangement is executed by both the Company and the administrator of the Deed of Company Arrangement unless
 - (a) the Court directs otherwise; or
 - (b) without prejudice to the power of the Court to grant a further extension of the administration, the executed Deed of Company Arrangement provides for the continuation of the appointment of the administrator of the Company for a specified period in which case the administration shall be extended for such specified period, provided that such specified period shall not exceed twelve (12) months.

111. Final progress reports

- (1) In this Chapter reference to a progress report is to a report in the form specified in Section 69 (*Reports to creditors*).
- (2) The “**final progress report**” means a progress report which includes a summary of—
 - (a) the administrator’s proposals;
 - (b) any major amendments to, or deviations from, those proposals;
 - (c) the steps taken during the administration; and
 - (d) the outcome.

112. Notice of automatic end of administration

- (1) Where the appointment of an administrator of a Company has ceased to have effect, and the administrator of the Company is not required by any other Section to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within five (5) business days of the date when the appointment has ceased, file a notice of automatic end of administration in the prescribed form with the Court. The notice shall be accompanied by a final progress report.
- (2) A copy of the notice and accompanying document shall be sent as soon as reasonably practicable to the Registrar, and to all other persons who received a copy of the administrator’s proposals.

- (3) If the administrator of a Company makes default in complying with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

113. Court ending administration on application of administrator

- (1) On the application of the administrator of a Company the Court may provide for the appointment of an administrator of the Company to cease to have effect from a specified time.
- (2) The administrator of a Company shall make an application under this Section if—
 - (a) he thinks the purpose of administration cannot be achieved in relation to the Company;
 - (b) he thinks the Company should not have entered administration;
 - (c) a creditors' meeting requires him to make an application under this Section;
 - (d)
 - (i) the administration is pursuant to an administration order; and
 - (ii) the administrator of the Company thinks that the purpose of administration has been sufficiently achieved in relation to the Company; or
 - (e) the Company contravenes Section 74(2) (*Execution of Deed of Company Arrangement*) by failing to execute a proposed Deed of Company Arrangement.
- (3) On an application under this Section the Court may—
 - (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order; and/or
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

114. Application to Court by administrator

- (1) An application to the Court under Section 113 (*Court ending administration on application of administrator*) for an order ending an administration shall have attached to it a progress report for the period since the last progress report (if any) or the date the Company entered administration and a statement indicating what the administrator of the Company thinks should be the next steps for the Company (if applicable).
- (2) Where the administrator of a Company applies to the Court because the creditors' meeting has required him to, he shall also attach a statement to the application in which he shall indicate (giving reasons) whether or not he agrees with the creditors' requirement to him to make the application.
- (3) When the administrator of a Company applies other than at the request of a creditors' meeting, he shall—
 - (a) give notice in writing to the applicant for the administration order under which he was appointed, or the person by whom he was appointed and the creditors of his intention to apply to Court at least five (5) business days before the date that he intends to make his application; and

- (b) attach to his application to Court a statement that he has notified the creditors, and copies of any response from creditors to that notification.
- (4) Where the administrator of a Company applies to Court under Section 113 (*Court ending administration on application of administrator*) in conjunction with a petition under Section 202 (*Application for winding-up*) for an order to wind up the Company, he shall, in addition to the requirements of subsection (3), notify the creditors whether he intends to seek appointment as liquidator.

115. Termination of administration where objective achieved

- (1) This Section applies where an administrator of a Company is appointed under Section 21 (*Power to appoint*) or 29 (*Power to appoint*).
- (2) If the administrator of a Company thinks that the purpose of administration has been sufficiently achieved in relation to the Company he may file a notice containing the information prescribed by paragraph 53 of Schedule 1, accompanied by a final progress report—
 - (a) with the Court; and
 - (b) with the Registrar.
- (3) The appointment of the administrator of the Company shall cease to have effect when the requirements of subsection (2) are satisfied.
- (4) Where the administrator of a Company files a notice, as soon as practicable, and within five business days, he shall send a copy of the notice (and the accompanying report) to every creditor of the Company (other than an opted-out creditor) of whose claim and address he is aware, to all those persons (other than opted-out creditors) who were notified of his appointment and the Company.
- (5) The administrator of a Company is taken to have complied with subsection (4) in relation to creditors if before the end of the prescribed period he publishes in the Abu Dhabi Global Market a notice (with standard content and stating the date that the administration ended) undertaking to provide a copy of the notice under subsection (2) to any creditor of the Company who applies in writing to a specified address.
- (6) An administrator of a Company who fails without reasonable excuse to comply with subsection (4) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

116. Court ending administration on application of creditor

- (1) On the application of a creditor of a Company the Court may provide for the appointment of an administrator of the Company to cease to have effect at a specified time.
- (2) An application under this Section must allege an improper motive—
 - (a) in the case of an administrator of a Company appointed by administration order, on the part of the applicant for the order; or
 - (b) in any other case, on the part of the person who appointed the administrator of the Company.
- (3) On an application under this Section the Court may—
 - (a) adjourn the hearing conditionally or unconditionally;

- (b) dismiss the application;
- (c) make an interim order; and/or
- (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

117. Application to Court by creditor

- (1) Where a creditor applies to the Court to end the administration a copy of the application shall be served on the administrator of the Company and the person who either made the application for the administration order or made the appointment. Where the appointment was made under Section 21 (*Power to appoint*), a copy of the application shall be served on the holder of the qualifying charge by virtue of which the appointment was made.
- (2) Service shall be effected not less than five (5) business days before the date fixed for the hearing. The administrator of the Company, applicant or appointor, or holder of the qualifying charge by virtue of which the appointment was made may appear at the hearing of the application.
- (3) A sealed copy of any order to end the administration shall be provided by the Court to the administrator of the Company in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).

118. Application for extension of administration

- (1) An application to the Court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any) or the date the Company entered administration.
- (2) When the administrator of the Company requests an extension of the period of the administration by consent of creditors, his request shall be accompanied by a progress report for the period since the last progress report (if any) or the date the Company entered administration.
- (3) Where the Court makes an order extending the administration, the administrator of the Company must give notice of the order to the creditors as soon as reasonably practicable, together with a copy of the progress report which accompanied the application to the Court.
- (4) Where the period of the administration has been extended by consent of creditors, the administrator of the Company must give notice to the creditors as soon as reasonably practicable.

119. Time of end of administration

- (1) For the purpose of any application to the Court for an order ending the administration, the appointment shall cease to have effect from the date and, if necessary, the time specified in the order.
- (2) A sealed copy of the order shall be provided by the Court to the administrator of the Company in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).

120. Notification by administrator of Court order

- (1) Where the Court makes an order to end the administration, the administrator of the Company must send to the Registrar a copy of the Court order and a copy of his final progress report.
- (2) As soon as reasonably practicable, the administrator of the Company must send a copy of the order and the final progress report to all other persons who received notice of his appointment.

121. Public interest winding-up

- (1) This Section applies where a winding-up order is made for the winding-up of a Company in administration or which is subject to a Deed of Company Arrangement on a petition presented under Section 203 (*Petition for winding-up by the Financial Services Regulator*).
- (2) This Section also applies where a provisional liquidator of a Company in administration or which is subject to a Deed of Company Arrangement is appointed following the presentation of a petition as described in subsection (1).
- (3) The Court shall order—
 - (a) that the appointment of the administrator shall cease to have effect; or
 - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the Court makes an order under subsection (3)(b) it may also—
 - (a) specify which of the powers under these Regulations are to be exercisable by the administrator; and
 - (b) order that these Regulations shall have effect in relation to the administrator with specified modifications.

122. Moving to creditors' voluntary liquidation

- (1) This Section applies where—
 - (a) the administrator of a Company thinks—
 - (i) that the total amount which each secured creditor of the Company is likely to receive has been paid to him or set aside for him; and
 - (ii) that a distribution will be made to unsecured creditors of the Company (if there are any); or
 - (b) at a meeting of creditors convened pursuant to Section 90 (*Meeting of creditors to consider variation or termination*), a Company's creditors—
 - (i) pass a resolution terminating a Deed of Company Arrangement executed by the Company; and
 - (ii) also resolve at a particular time under Section 89 (*Creditors may terminate Deed of Company Arrangement and resolve that Company be wound up*) that the Company be wound up.
- (2) The administrator of the Company may, and the administrator of a Deed of Company Arrangement shall, send to the Registrar a notice that this Section applies.
- (3) On receipt of a notice under subsection (2) the Registrar shall register it.

- (4) If an administrator of a Company or of a Deed of Company Arrangement sends a notice under subsection (2) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the Court; and
 - (b) send a copy of the notice to each creditor other than an opted-out creditor of whose claim and address he is aware.
- (5) On the registration of a notice under subsection (2)—
 - (a) if sent by an administrator of the Company or of a Deed of Company Arrangement, the appointment of an administrator of the Company or of a Deed of Company Arrangement shall cease to have effect; and
 - (b) the Company shall be wound up as if a resolution for voluntary winding-up under Section 174 (*Circumstances in which a Company may be wound up voluntarily*) were passed on the day on which the notice is registered.
- (6) The liquidator for the purposes of the winding-up shall be—
 - (a) a person nominated by the creditors of the Company in the prescribed manner and within the prescribed period; or
 - (b) if no person is nominated under paragraph (a), the administrator of the Company or of the Deed of Company Arrangement, as the case may be.
- (7) In the application of Part 3 (*Winding-up*) to a winding-up by virtue of this Section—
 - (a) Section 192 (Notice of resolution to wind up) shall not apply;
 - (b) Section 193 (*Commencement of winding-up*) shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3);
 - (c) Section 175 (*Declaration of solvency*) shall not apply;
 - (d) Section 186 (*Meeting of members and creditors*) and Section 187 (*Appointment of liquidator*) shall not apply;
 - (e) Section 208 (*Commencement of winding-up*) shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3); and
 - (f) any creditors' committee which is in existence immediately before the Company ceases to be in administration shall continue in existence after that time as if appointed as a Liquidation Committee under Section 230 (*Liquidation Committee*).

123. Moving to creditors' voluntary liquidation

- (1) As soon as reasonably practicable after the day on which the Registrar registers the notice of moving to creditors' voluntary liquidation sent by the administrator of the Company or of the Deed of Company Arrangement, as the case may be, for the purposes of Section 122(3) (*Moving to creditors' voluntary liquidation*), the person who at that point ceases to be the administrator of the Company or of the Deed of Company Arrangement, as the case may be, must (whether he becomes the liquidator or not) send a final progress report, to the Registrar and to all those who received notice of his appointment.

- (2) For the purposes of Section 122(6)(a) (*Moving to creditors' voluntary liquidation*), a person is nominated by the creditors as liquidator by—
 - (a) their approval of the statement of the proposed liquidator in the proposals or revised proposals of the administrator of the Company or the proposed resolutions included in the notice given to creditors under Section 90 (*Meeting of creditors to consider variation or termination*); or
 - (b) their nomination of a different person before their approval of the proposals or revised proposals or for the purposes of the proposed resolutions.

124. Moving from administration to dissolution

- (1) If the administrator of a Company thinks that the Company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the Registrar.
- (2) The Court may on the application of the administrator of a Company disapply subsection (1) in respect of the Company.
- (3) On receipt of a notice under subsection (1) the Registrar shall register it.
- (4) On the registration of a notice in respect of a Company under subsection (1) the appointment of an administrator of the Company shall cease to have effect.
- (5) If an administrator of a Company sends a notice under subsection (1) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the Court; and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of three months beginning with the date of registration of a notice in respect of a Company under subsection (1) the Company is deemed to be dissolved.
- (7) On an application in respect of a Company by the administrator of a Company or another interested person the Court may—
 - (a) extend the period specified in subsection (6);
 - (b) suspend that period; or
 - (c) disapply subsection (6).
- (8) Where an order is made under subsection (7) in respect of a Company the administrator of the Company shall as soon as is reasonably practicable notify the Registrar.
- (9) An administrator of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he fails without reasonable excuse to comply with subsection (5).

125. Moving from administration to dissolution

- (1) Where, for the purposes of Section 124(1) (*Moving from administration to dissolution*), the administrator of a Company sends a notice of moving from administration to dissolution to the Registrar, the administrator of the Company must attach to that notice a final progress report.

- (2) As soon as reasonably practicable a copy of the notice and the attached document shall be sent to all other persons who received notice of the appointment of the administrator of the Company.
- (3) Where a Court makes an order under Section 124(7) (*Moving from administration to dissolution*) it shall, where the applicant is not the administrator of the Company, give a copy of the order to the administrator of the Company.

126. Discharge of administration order where administration ends

- (1) This Section applies where—
 - (a) the Court makes an order under this Part 1 (*Administration*) providing for the appointment of an administrator of a Company to cease to have effect; and
 - (b) the administrator was appointed by administration order.
- (2) The Court shall discharge the administration order.

127. Notice to Registrar where administration ends

- (1) This Section applies where the Court makes an order under these Regulations providing for the appointment of an administrator to cease to have effect.
- (2) The administrator shall send a copy of the order to the Registrar within the period of fourteen (14) days beginning with the date of the order.
- (3) An administrator who fails without reasonable excuse to comply with subsection (2) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

Chapter 11 - Replacing Administrator

128. Resignation of administrator

- (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
 - (a) in the case of an administrator of the Company appointed by administration order, by notice in writing to the Court;
 - (b) in the case of an administrator of the Company appointed under Section 21 (*Power to appoint*), by notice in writing to the holder of the qualifying charge by virtue of which the appointment was made;
 - (c) in the case of an administrator of the Company appointed under Section 29(1) (*Power to appoint*), by notice in writing to the Company;
 - (d) in the case of an administrator of the Company appointed under Section 29(2) (*Power to appoint*), by notice in writing to the Directors of the Company; or
 - (e) in the case of an administrator of a Deed of Company Arrangement, by notice in writing to the Company and the Court.

129. Grounds for resignation

- (1) The administrator may give notice of his resignation on grounds of ill health or because—
 - (a) he intends ceasing to be an insolvency practitioner; or

- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.
- (2) The administrator may, with the permission of the Court, give notice of his resignation on grounds other than those specified in subsection (1).

130. Notice of intention to resign

- (1) The administrator shall in all cases give at least five (5) business days' notice of his intention to resign, or to apply for the Court's permission to do so, containing the information prescribed in paragraph 52 of Schedule 1 (*Notice of intention to Resign*) to the following persons—
 - (a) in the case of an administrator of the Company—
 - (i) if there is a continuing administrator of the Company, to him; and
 - (ii) if there is a creditors' committee, to it; but
 - (iii) if there is no such administrator and no creditors' committee, to the Company and its creditors.
 - (b) in the case of an administrator of a Deed of Company Arrangement, to the Company and its creditors.
- (2) Where the administrator of a Company was appointed by the holder of a qualifying charge under Section 21 (*Power to appoint*), the notice of intention to resign shall also be sent to all holders of prior qualifying charges, and to the person who appointed the administrator of the Company.
- (3) Where the administrator of the Company was appointed by the Company or the Directors of the Company under Section 29 (*Power to appoint*), a copy of the notice of intention to resign shall also be sent to the appointor and all holders of a qualifying charge.

131. Notice of resignation

- (1) The notice of resignation shall contain the information prescribed in paragraph 52 of Schedule 1 (*Notice of intention to resign*).
- (2) Where the administrator of a Company was appointed under an administration order, the notice shall be filed with the Court, and a copy sent to the Registrar. A copy of the notice of resignation shall be sent not more than five (5) business days after it has been filed with the Court to all those to whom notice of intention to resign was sent.
- (3) Where the administrator of a Company was appointed by the holder of a qualifying charge under Section 21 (*Power to appoint*), a copy of the notice of resignation shall be filed with the Court and sent to the Registrar, and anyone else who received a copy of the notice of intention to resign, within five (5) business days of the notice of resignation being sent to the holder of the qualifying charge by virtue of which the appointment was made.
- (4) Where the administrator of a Company was appointed by the Company or the Directors under Section 29 (*Power to appoint*), a copy of the notice of resignation shall be filed with the Court and sent to the Registrar and to anyone else who received notice of intention to resign within five (5) business days of the notice of resignation being sent to either the Company or the Directors that made the appointment.

- (5) In the case of an administrator of a Deed of Company Arrangement, a copy of the notice of resignation shall be filed with the Court and sent to the Registrar and to anyone else who received notice of his intention to resign within five (5) business days of the notice of resignation being filed with the Court.

132. Removal of administrator from office

The Court may by order remove an administrator from office.

133. Application to Court to remove administrator from office

- (1) Any application under Section 132 (*Removal of administrator from office*) shall state the grounds on which it is requested that the administrator should be removed from office.
- (2) Service of the notice of the application shall be effected on the administrator and, in the case of an administrator of a Company, the person who made the application for the administration order or the person who appointed the administrator, the creditors' committee (if any), the joint administrator (if any), and where there is neither a creditors' committee or joint administrator, on the Company and all the creditors, including any qualifying charge holders and, in the case of an administrator of a Deed of Company Arrangement, the joint administrator (if any), the Company and all the creditors, in each case not less than five (5) business days before the date fixed for the application to be heard. Where the appointment was made under Section 21 (*Power to appoint*), the notice shall be served on the holder of the qualifying charge by virtue of which the appointment was made.
- (3) A sealed copy of any order removing the administrator shall be provided by the Court to the applicant in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*), following which the applicant shall as soon as reasonably practicable send a copy of the order to the administrator.
- (4) The applicant shall also within five (5) business days of the order being made send a copy of the order to all those to whom notice of the application was sent.
- (5) A copy of the order shall also be sent to the Registrar within the same time period.

134. Administrator ceasing to be registered

- (1) The administrator of a Company or of a Deed of Company Arrangement shall vacate office if he ceases to be an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) in relation to the Company or a Deed of Company Arrangement.
- (2) Where an administrator vacates office by virtue of subsection (1) he shall give notice in writing—
- (a) in the case of an administrator of a Company appointed by administration order, to the Court;
 - (b) in the case of an administrator of a Company appointed under Section 21 (*Power to appoint*), to the holder of the qualifying charge by virtue of which the appointment was made;
 - (c) in the case of an administrator of a Company appointed under Section 29(1) (*Power to appoint*), to the Company;
 - (d) in the case of an administrator of a Company appointed under Section 29(2) (*Power to appoint*), to the Directors of the Company; or

- (e) in the case of an administrator of a Deed of Company Arrangement, to the Company, the creditors of the Company and the Court.
- (3) An administrator who fails without reasonable excuse to comply with subsection (2) commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

135. Notice of vacation of office when administrator ceases to be registered to act

Where the administrator who has ceased to be an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) in relation to the Company or a Deed of Company Arrangement, as the case may be, gives notice in accordance with Section 134 (*Administrator ceasing to be registered*), he shall also give notice to the Registrar.

136. Administrator deceased

- (1) Subject as follows, where the administrator has died, it is the duty of his personal representatives to give notice of the fact to the Court, specifying the date of the death. This does not apply if notice has been given under either subsection (2) or (3).
- (2) If the deceased administrator was a partner in or an employee of a firm, notice may be given by a partner in the firm who is an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).
- (3) Notice of the death may be given by any person producing to the Court the relevant death certificate or a copy of it.
- (4) Where a person gives notice to the Court under this Section, he shall also give notice to the Registrar.

137. Supplying vacancy in office of administrator

- (1) This Section applies where an administrator—
 - (a) dies;
 - (b) resigns;
 - (c) is removed from office under Section 132 (*Removal of administrator from office*); or
 - (d) vacates office under Section 134 (*Administrator ceasing to be qualified*).
- (2) Where the administrator of a Company was appointed by administration order, the Court may replace the administrator of the Company on an application under this Section made by—
 - (a) a creditors' committee of the Company;
 - (b) the Company;
 - (c) the Directors of the Company;
 - (d) one or more creditors of the Company; or
 - (e) where more than one person was appointed to act jointly or concurrently as the administrator of the Company, any of those persons who remain in office.

- (3) But an application may be made in reliance on subsection (2)(b) to (d) only where—
 - (a) there is no creditors' committee of the Company;
 - (b) the Court is satisfied that the creditors' committee or a remaining administrator of the Company is not taking reasonable steps to make a replacement; or
 - (c) the Court is satisfied that for another reason it is right for the application to be made.
- (4) Where the administrator of the Company was appointed under Section 21 (*Power to appoint*) the holder of the qualifying charge by virtue of which the appointment was made may replace the administrator of the Company.
- (5) Where the administrator of the Company was appointed under Section 29(1) (*Power to appoint*) by the Company it may replace the administrator of the Company.
- (6) A replacement under subsection (5) may be made only—
 - (a) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property; or
 - (b) where consent is withheld, with the permission of the Court.
- (7) Where the administrator of the Company was appointed under Section 29(2) (*Power to appoint*) the Directors of the Company may replace the administrator of the Company.
- (8) A replacement under subsection (7) may be made only—
 - (a) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property; or
 - (b) where consent is withheld, with the permission of the Court.
- (9) The Court may replace an administrator of the Company on the application of a person listed in subsection (2) if the Court—
 - (a) is satisfied that a person who is entitled to replace the administrator of the Company under any of subsections (4), (5) or (7) is not taking reasonable steps to make a replacement; or
 - (b) that for another reason it is right for the Court to make the replacement.
- (10) The Court may replace an administrator of a Deed of Company Arrangement on the application of a creditor or creditors, or a liquidator or provisional liquidator, of the Company concerned.

138. Application to replace

- (1) Where an application is made to the Court under Section 137(2), 137(9) or 137(10) (*Supplying vacancy in office of administrator*) to appoint a replacement administrator, the application shall be accompanied by a written statement containing the information prescribed in paragraph 46 of Schedule 1 by the person proposed to be the replacement administrator.
- (2) Where the original administrator was appointed under an administration order, a copy of the application shall be served, in addition to those persons listed in Section 8(2) (*Administration application*), on the person who made the application for the administration order.

- (3) Where the application to the Court is made under Section 137(9) (*Supplying vacancy in office of administrator*), the application shall be accompanied by a witness statement setting out the applicant's belief as to the matters set out in that subsection.
- (4) Section 15 (*Manner in which service to be effected*) shall apply to the service of an application under Section 137(2), 137(9) or 137(10) (*Supplying vacancy in office of administrator*) as it applies to service in accordance with Section 13 (*Service of administration application*).
- (5) Sections 16 (*Proof of service*), 17 (*Administration application to appoint specified person as administrator by holder of qualifying charge*), 19 (*The hearing*), 20(1) and Chapter 220(2) (*Notice of administration order*) apply to an application under Section 137(2) or 137(9) (*Supplying vacancy in office of administrator*) and Sections 16 (*Proof of service*), 19 (*The hearing*) (but treating references to administrator of the Company as administrator of a Deed of Company Arrangement), 20(1) and Chapter 220(2) (*Notice of administration order*) apply to an application under Section 137(10) (*Supplying vacancy in office of administrator*).

139. Notification and advertisement of replacement administrator

- (1) Where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to subsection (2)), and all statements, consents etc. as are required shall also be required in the case of the appointment of a replacement. All forms and notices shall clearly identify that the appointment is of a replacement administrator.
- (2) The replacement administrator shall send notice of the appointment to the Registrar.

140. Substitution of administrator: competing qualifying charge-holder

- (1) This Section applies where an administrator of a Company is appointed under Section 21 (*Power to appoint*) by the holder of a qualifying charge in respect of the Company's property.
- (2) The holder of a prior qualifying charge in respect of the Company's property may apply to the Court for the administrator to be replaced by an administrator nominated by the holder of the prior charge.

141. Substitution of administrator appointed by Company or Directors: creditors' meeting

- (1) This Section applies where—
 - (a) an administrator of a Company is appointed by a Company or Directors under Section 29 (*Power to appoint*); and
 - (b) there is no holder of a qualifying charge in respect of the Company's property.
- (2) A creditors' meeting may replace the administrator of the Company.
- (3) A creditors' meeting may act under subsection (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

142. Vacation of office: discharge from liability

- (1) Where a person ceases to be the administrator of a Company or of a Deed of Company Arrangement (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to

have effect) he is discharged from liability in respect of any action of his as administrator.

- (2) The discharge provided by subsection (1) takes effect—
 - (a) in the case of an administrator who dies, on the filing with the Court of notice of his death;
 - (b) in the case of an administrator of a Company appointed under Section 21 (*Power to appoint*) or Section 29 (*Power to appoint*), at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors; or
 - (c) in any case, at a time specified by the Court.
- (3) For the purpose of the application of subsection (2)(b) in a case where the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*), a resolution shall be taken as passed if (and only if) passed with the approval of—
 - (a) each secured creditor of the Company; or
 - (b) if the administrator of the Company has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
 - (a) applies to liability accrued before the discharge takes effect; and
 - (b) does not prevent the exercise of the Court's powers under Section 106 (*Misfeasance*).

143. Vacation of office: charges and liabilities

- (1) This Section applies where a person ceases to be the administrator of a Company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).
- (2) In this Section—
 - (a) **"the former administrator"** means the person referred to in subsection (1); and
 - (b) **"cessation"** means the time when he ceases to be the Company's administrator.
- (3) The former administrator's remuneration and expenses shall be—
 - (a) charged on and payable out of property of which he had custody or control immediately before cessation; and
 - (b) payable in priority to any security to which Section 99 (*Charged property: floating charge*) applies.

- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
 - (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation; and
 - (b) payable in priority to any charge arising under subsection (3).
- (5) Subsection (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
 - (a) action taken within the period of fourteen (14) days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract;
 - (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment; and
 - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In subsection (5)(c) "**wages or salary**" includes—
 - (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued);
 - (b) a sum payable in respect of a period of absence through illness or other good cause; and
 - (c) a sum payable in lieu of holiday.

144. Administrator's duties on vacating office

- (1) Where the administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*), he is under an obligation as soon as reasonably practicable to deliver up to the person succeeding him as administrator the property of the Company (after deduction of any expenses properly incurred and distributions made by him), but in the case of an administrator of a Deed of Company Arrangement, only to the extent put into and remaining in his possession pursuant to the Deed of Company Arrangement and further to deliver up to that person—
 - (a) his records as administrator, including all relevant correspondence, proofs and other related papers; and
 - (b) the Company's books, papers and other records, to the extent within his control.
- (2) If the administrator makes default in complying with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

Chapter 12 - General

145. Joint administrators

- (1) In this Part 1 (Administration)—
 - (a) a reference to the appointment of an administrator of a Company or of a Deed of Company Arrangement includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a Company or of a Deed of Company Arrangement, respectively; and
 - (b) a reference to the appointment of a person as administrator of a Company or of a Deed of Company Arrangement includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a Company or of a Deed of Company Arrangement, respectively.
- (2) The appointment of a number of persons to act as administrator of a Company or of a Deed of Company Arrangement must specify—
 - (a) which functions (if any) are to be exercised by the persons appointed acting jointly; and
 - (b) which functions (if any) are to be exercised by any or all of the persons appointed.
- (3) This Section applies where two (2) or more persons are appointed to act jointly as the administrator of a Company or of a Deed of Company Arrangement, as the case may be.
- (4) A reference to the administrator of the Company or of a Deed of Company Arrangement is a reference to those persons acting jointly.
- (5) However, a reference to the administrator of a Company or of a Deed of Company Arrangement in Chapter 11 (*Replacing Administrator*) of this Part 1 (*Administration*) is a reference to any or all of the persons appointed to act jointly.
- (6) Where a contravention of omission is committed by the administrator, each of the persons appointed to act jointly—
 - (a) commits the contravention; and
 - (b) may be proceeded against and punished individually.
- (7) The reference in Section 47(1)(a) (*Publicity*) to the name of the administrator of a Company is a reference to the name of each of the persons appointed to act jointly.
- (8) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a Company or of a Deed of Company Arrangement, this Section applies only in relation to those functions.

146. Concurrent administrators

- (1) This Section applies where two or more persons are appointed to act concurrently as the administrator of a Company or of a Deed of Company Arrangement.
- (2) A reference to the administrator of a Company or of a Deed of Company Arrangement in these Regulations is a reference to any of the persons appointed (or any combination of them).

147. Joint and concurrent administrators

- (1) Where a Company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the Company.
- (2) Where a Company entered administration by administration order, an appointment under subsection (1) must be made by the Court on the application of—
 - (a) a person or group listed in Section 8(1)(a) to 8(1)(d) (*Administration application*); or
 - (b) the person or persons acting as the administrator of the Company.
- (3) Where a Company entered administration by virtue of an appointment under Section 21 (*Power to appoint*), an appointment under subsection (1) must be made by—
 - (a) the holder of the qualifying charge by virtue of which the appointment was made; or
 - (b) the Court on the application of the person or persons acting as the administrator of the Company.
- (4) Where a Company entered administration by virtue of an appointment under Section 29(1) (*Power to appoint*), an appointment under subsection (1) above must be made either by the Court on the application of the person or persons acting as the administrator of the Company or—
 - (a) by the Company; and
 - (b) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property or, where consent is withheld, with the permission of the Court.
- (5) Where a Company entered administration by virtue of an appointment under Section 29(2) (*Power to appoint*), an appointment under subsection (1) must be made either by the Court on the application of the person or persons acting as the administrator of the Company or—
 - (a) by the Directors of the Company; and
 - (b) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property or, where consent is withheld, with the permission of the Court.
- (6) An appointment under subsection (1) may be made only with the consent of the person or persons acting as the administrator of the Company.
- (7) Where a Company is subject to a Deed of Company Arrangement, a person may be appointed to act as an administrator jointly or concurrently with the person or persons acting as the administrator of the Deed of Company Arrangement by resolution of the creditors of the Company at a meeting of creditors convened pursuant to Section 90 (*Meeting of creditors to consider variation or termination*), subject to such appointment obtaining the consent of the person or persons acting as the administrator of the Deed of Company Arrangement.

148. Notification and advertisement of joint administrator

- (1) Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same Sections shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to subsection (2).
- (2) The additional administrator shall send notice of the appointment to the Registrar.

149. Presumption of validity

An act of the administrator of a Company or of a Deed of Company Arrangement is valid in spite of a defect in his appointment.

150. Majority decision of Directors

A reference in this Part 1 (*Administration*) to something done by the Directors of a Company includes a reference to the same thing done by a majority of the Directors of a Company.

151. Extension of time limit

- (1) Where a provision of this Part 1 (*Administration*) provides that a period may be varied in accordance with this Section, the period may be varied in respect of a Company—
 - (a) by the Court; and
 - (b) on the application of the administrator of the Company, if the Company is in administration, or the administrator of the Deed of Company Arrangement, if the Company is subject to a Deed of Company Arrangement.
- (2) A time period may be extended in respect of a Company under this Section—
 - (a) more than once; and
 - (b) after expiry.
- (3) A period specified in Section 56(6) (*Administrator's proposals*), paragraph 6 (*Notice of meetings: when and to whom delivered*) of Schedule 6 (*Meetings and Correspondence*) or Section 61(2) (Requirement for initial creditors' meeting) may be varied in respect of a Company by the administrator of the Company or, in the case of a Company which is subject to a Deed of Company Arrangement and the relevant period specified in paragraph 6 (*Notice of meetings: when and to whom delivered*) of Schedule 6 (*Meetings and Correspondence*), by the administrator of the Deed of Company Arrangement, with consent.
- (4) In subsection (3) "**consent**" means consent of—
 - (a) each secured creditor of the Company; and
 - (b) if the Company has unsecured debts, creditors whose debts amount to more than 50% of the Company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (5) But where the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*) "**consent**" means—
 - (a) consent of each secured creditor of the Company; or

- (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (6) Consent for the purposes of subsection (3) may be—
 - (a) written; or
 - (b) signified at a creditors' meeting or meeting of creditors.
- (7) The power to extend under subsection (2)—
 - (a) may be exercised in respect of a period only once;
 - (b) may not be used to extend a period by more than 28 days;
 - (c) may not be used to extend a period which has been extended by the Court; and
 - (d) may not be used to extend a period after expiry.
- (8) Where a period is extended under this Section, a reference to the period shall be taken as a reference to the period as extended.

PART 2 : RECEIVERSHIP

Chapter 1 - General

152. Appointment and powers of receivers and administrative receivers

- (1) Where a Company grants a person powers contained in an instrument to appoint an Office-holder to get in and sell any part of its property and to apply the proceeds in reduction of a debt due to that other person, the Office-holder, once appointed, shall be a “**receiver**” and shall be subject to these Regulations in his performance of that function.
- (2) A receiver may be appointed under, and has all of the powers conferred upon him by, such instrument, save as provided in these Regulations.
- (3) In these Regulations, “**administrative receiver**” means a receiver appointed under powers contained in an instrument which constitutes a qualifying charge, in respect of the property of a Company which consists of the whole or substantially the whole of the property of that Company, or who would be such a receiver but for the appointment of some other person as the receiver of part of that Company’s property. An administrative receiver has, in addition to the powers contained in the instrument appointing him in accordance with subsection (1), the powers set out in Schedule 3 (*Powers of Administrative Receiver*).
- (4) In Schedule 3 (*Powers of Administrative Receiver*), references to the property of the Company are to the property of which the administrative receiver is, but for the appointment of some other person as the receiver of part of the Company’s property, the administrative receiver.
- (5) The document appointing a person as a receiver of a Company’s property—
 - (a) must fix the amount to be paid by way of remuneration to the person who has been appointed receiver or provide the basis on which the amount of remuneration will be determined; and
 - (b) is of no effect until it is accepted by the receiver in writing.
- (6) A receiver or administrative receiver appointed over property of a Company in the Abu Dhabi Global Market must be a person who is an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).
- (7) Where the appointment of a person as the receiver of a Company’s property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise) the Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.
- (8) The holder of a qualifying charge in respect of a Company’s property may not appoint an administrative receiver of the Company except in the following circumstances—
 - (a) in pursuance of an agreement which is or forms part of a capital market arrangement provided that—
 - (i) a party incurs or, when the agreement was entered into, was expected to incur under the arrangement a debt of at least \$50 million; and
 - (ii) such arrangement involves the issue of a capital market investment; or

- (b) in relation to a project company of a project which includes step-in rights and is a financed project; or
- (c) in relation to such additional circumstances as the Registrar may by rules designate from time to time.

Chapter 2 - Provisions applicable to receivership and administrative receivership

153. Notification that receiver has been appointed

- (1) When a receiver of any property of a Company has been appointed, every invoice, order for goods or services or business letter (whether in hard copy, electronic, or any other form) issued by or on behalf of the Company and all of the Company's websites, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with subsection (1), the Company and any officer of the Company who knowingly and wilfully authorises or permits the default commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

154. Liability for Contracts

- (1) A receiver is—
 - (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions; and
 - (b) entitled in respect of that liability to an indemnity out of the assets.
- (2) For the purposes of subsection (1), the receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen (14) days after his appointment.
- (3) Subsection (1) does not limit any right to indemnity which the receiver would have apart from that subsection, nor limit the receiver's liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

155. Distribution of moneys

- (1) Subject to Section 170 (*Power to dispose of charged property*), any moneys received by the receiver shall be applied in the following order of priority—
 - (a) in satisfaction of all costs and expenses incurred by any receiver and of all remuneration due to any receiver;
 - (b) in payment of any debts or claims secured by a security, having priority to the security by virtue of which the receiver was appointed;
 - (c) in payment of any debts or claims secured by the security by virtue of which the receiver was appointed; and
 - (d) in payment of the surplus (if any) to the Company or person who is otherwise entitled to the property.

156. Duties of receiver

- (1) A receiver shall—
 - (a) act in good faith in carrying out his functions;

- (b) manage any property of the Company with due diligence; and
 - (c) when exercising a power of sale of property of the Company, use reasonable care to obtain the best price reasonably obtainable in the circumstances.
- (2) A receiver is not obliged to act in accordance with subsection (1)(b) where to do so would prejudice the interests of the persons by whom or on whose behalf he was appointed.

157. Accounts

- (1) The receiver shall—
- (a) within two (2) months after the end of twelve (12) months from the date of his appointment, and after every subsequent period of twelve (12) months; and
 - (b) within two (2) months after he ceases to act as receiver,
- send to the Registrar, to the Company and to the person by whom he was appointed, accounts detailing his receipts and payments as receiver.
- (2) The accounts are to be in the form of an abstract showing—
- (a) receipts and payments during the relevant period of twelve (12) months; or
 - (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last twelve (12) month period to the time when he so ceased (alternatively, if there have been no previous accounts, receipts and payments in the period since his appointment as receiver).
- (3) A receiver who makes default in complying with this Section commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

158. Application to Court for directions

- (1) A receiver of the property of a Company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver has been so appointed, or a creditor or other interested person, may apply to the Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver.
- (2) On such an application under subsection (1), the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

159. Vacation of office

- (1) A receiver of a Company may at any time be removed from office by order of the Court (but not otherwise) and may resign his office by giving notice of his resignation in the manner prescribed in subsection (4).
- (2) A receiver must vacate office if he ceases to be an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).
- (3) At the time a receiver vacates office—
- (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 paid out of any property of the Company which is in his custody or under his control at that time, in priority to any security interest held by the person by or on whose behalf he was appointed.

- (4) Before resigning or otherwise vacating his office a receiver shall give at least seven (7) days' notice of his intention to do so to—
 - (a) the person by whom he was appointed; and
 - (b) the Company or any liquidator appointed to it.
- (5) A notice given under subsection (4) shall specify the date on which the receiver intends his resignation to take effect.
- (6) When a receiver vacates office in accordance with this Section he shall, within fourteen (14) days after his vacation of office, send a notice to that effect to the Registrar.
- (7) If a receiver without reasonable excuse fails to comply with subsections (2) or (6), he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

Chapter 3 - Provisions applicable to administrative receivers only

160. Agent of the Company

The administrative receiver of a Company is deemed to be the Company's agent, unless and until the Company goes into liquidation.

161. Committee of creditors

- (1) When a meeting of creditors is summoned under Section 171(2) (*Meeting of creditors*), the meeting may, if it thinks fit, establish a committee of creditors to exercise the functions conferred on it by or under these Regulations.
- (2) If such a creditors' committee is established—
 - (a) the relevant provisions of Schedule 7 (*Creditors' Committees*) shall apply; and
 - (b) the creditors' committee may, on giving not less than seven (7) days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

162. Notice and advertisement of appointment

- (1) When an administrative receiver is appointed, he shall—
 - (a) within seven (7) days of his appointment, give notice of his appointment to the Company and to the Registrar;
 - (b) within twenty-eight (28) days of his appointment, send a notice of his appointment to the creditors of the Company (so far as he is aware of their addresses).
- (2) The administrative receiver must also publish in the Abu Dhabi Global Market, in such manner as he thinks appropriate, the following information—
 - (a) that an administrative receiver has been appointed;
 - (b) the registered name of the Company, as at the date of the appointment, and its registered number;

- (c) any other name with which the Company has been registered in the twelve (12) months preceding that date;
 - (d) any name under which the Company has traded at any time in those twelve (12) months, if substantially different from its then registered name;
 - (e) the name and address of the administrative receiver and the date of his appointment;
 - (f) the name of the person by whom the appointment was made;
 - (g) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;
 - (h) the nature of the business of the Company; and
 - (i) a brief description of the assets of the Company to which the administrative receiver has been appointed.
- (3) If the administrative receiver without reasonable excuse fails to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

163. No duty to enquire as to power of administrative receiver

A person dealing with an administrative receiver in good faith and for value is not concerned to enquire whether the administrative receiver is acting within his powers.

164. Notice requiring Statement of Affairs

- (1) An administrative receiver may require a Statement of Affairs to be made out and submitted to him. Where an administrative receiver determines that it is required, he shall send notice to each relevant person whom he determines appropriate requiring him or them to prepare and submit a statement of the Company's affairs.
- (2) The notice shall inform each of the relevant persons of—
 - (a) the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) the time within which the statement must be delivered;
 - (c) the effect of Section 165(5) (*Statement of Company's affairs*); and
 - (d) the application to him, and each other relevant person, of Section 255 (*Duty to co-operate with Office-holder*).
- (3) The administrative receiver shall furnish each relevant person to whom he has sent notice containing the content prescribed by subsection (2) with the forms required for the preparation of the Statement of Affairs.
- (4) For the purposes of subsection (1) above "**relevant person**" means—
 - (a) a person who is or has been an officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters administrative receivership;
 - (c) a person employed by the Company during that period; and

- (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (5) For the purposes of subsection (4) a reference to employment is a reference to employment through a contract of employment or a contract for services.

165. Statement of Company's affairs

- (1) The Statement of Affairs must—
 - (a) be verified by a statement of truth by each relevant person in accordance with the ADGM Court Procedure Rules;
 - (b) be in the prescribed form containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (2) A person required to submit a Statement of Affairs under Section 164(1) (*Notice requiring Statement of Affairs*) must do so 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 him by the administrative receiver.
- (3) The administrative receiver may—
 - (a) release a person from a requirement to provide a Statement of Affairs under Section 164(1) (*Notice Requiring Statement of Affairs*); or
 - (b) extend the period specified in subsection (2) (whether before or after expiry).
- (4) If the administrative receiver refuses to act under subsection (3), the Court, if it thinks fit, may exercise it.
- (5) If a person fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

166. Verification and filing

- (1) The administrative receiver of a Company may require any relevant person to submit a statement of concurrence in the prescribed form stating that he concurs in the Statement of Affairs. Where the administrative receiver of a Company does so, he shall inform each person making the Statement of Affairs of that fact.
- (2) The Statement of Affairs shall be delivered by the relevant person or persons making the statement of truth, together with a copy, to the administrative receiver of the Company. The relevant person or persons shall also deliver a copy of the Statement of Affairs to all those persons whom the administrative receiver of the Company has required to make a statement of concurrence.
- (3) A person required to submit a statement of concurrence shall do so before the end of the period of five (5) business days (or such other period as the administrative receiver of the Company may agree) beginning with the day on which the Statement of Affairs being concurred with is received by him.

- (4) A statement of concurrence may be qualified in respect of matters dealt with in the Statement of Affairs, where the maker of the statement of concurrence is not in agreement with the relevant person or persons, or he considers the Statement of Affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.
- (5) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrative receiver of the Company by the person who makes it, together with a copy of it.
- (6) Subject to Section 167 (*Limited disclosure*), the administrative receiver of a Company shall as soon as reasonably practicable send to the Registrar a copy of the Statement of Affairs and any statement of concurrence.

167. Limited disclosure

- (1) Where the administrative receiver of a Company thinks that it would prejudice the conduct of the administrative receivership or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the Company's affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.
- (2) The Court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the Registrar.
- (3) The administrative receiver of a Company shall as soon as reasonably practicable send to the Registrar a copy of the order and the Statement of Affairs (to the extent provided by the order) and any statement of concurrence.
- (4) If a creditor seeks disclosure of a Statement of Affairs or a specified part of it in relation to which an order has been made under this Section, he may apply to the Court for an order that the administrative receiver of a Company disclose it or a specified part of it. The application shall be supported by written evidence in the form of a witness statement.
- (5) The applicant shall give the administrative receiver of a Company notice of his application at least three (3) business days before the hearing.
- (6) The Court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.
- (7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrative receiver of a Company shall, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (8) The administrative receiver of a Company shall, as soon as reasonably practicable after the making of an order under subsection (7), file with the Registrar a copy of the Statement of Affairs to the extent provided by the order.
- (9) The provisions of the ADGM Court Procedure Rules relating to disclosure and inspection of documents shall not apply to an application under this Section.

168. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the administrative receiver under Section 165(3) (*Statement of Company's affairs*) to give a release from the obligation imposed by Section 164(1)

(*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.

- (2) A relevant person may, if he requests a release or extension of time and it is refused by the administrative receiver, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five (5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.
- (4) The relevant person shall, at least fourteen (14) days before the hearing, send to the administrative receiver a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The administrative receiver may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.
- (6) If such a report is filed, a copy of it shall be sent by the administrative receiver to the relevant person, not later than five (5) business days before the hearing.
- (7) Sealed copies of any order made on the application shall be sent by the Court to the relevant person and the administrative receiver.
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the administrative receivership.

169. Expense of Statement of Affairs

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the administrative receiver as an expense of the administrative receivership, any expenses incurred by the relevant person in so doing which the administrative receiver considers reasonable.
- (2) Any decision by the administrative receiver under this Section is subject to appeal to the Court.
- (3) Nothing in this Section relieves a relevant person from any obligation with respect to the preparation, verification and submission of the Statement of Affairs, or to the provision of information to the administrative receiver.

170. Power to dispose of charged property

- (1) Where, on an application by the administrative receiver, the Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the Company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.
- (2) Subsection (1) does not apply to a security held by the person by whom the administrative receiver was appointed, or any security which has priority over that security interest.

- (3) It shall be a condition of an order under this Section that—
 - (a) the net proceeds of the disposal; and
 - (b) such sum as may be required to make good the deficiency between the net proceeds of the disposal and the net amount which would be realised on a sale of the property in the open market by a willing vendor,shall be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of subsection (3) relates to two (2) or more securities, that condition shall require the net proceeds of the disposal and, where subsection (3)(b) applies, the sums mentioned in that subsection to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (5) If an order is made under this Section, the administrative receiver shall immediately give notice of it to the person who is the secured creditor if such person has not been a party to the proceedings before the Court.
- (6) The administrative receiver shall send to the Registrar a copy of the order within fourteen (14) days of it being made.
- (7) If the administrative receiver fails to comply with subsection (6) without reasonable excuse, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (8) In this Section, “**relevant property**” in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the Company’s property, would be the receiver.

171. Meeting of creditors

- (1) The administrative receiver shall, within three (3) months after his appointment, send to the Registrar, to any liquidator of the Company and to every creditor of the Company (other than an opted-out creditor) of whose claim and address he is aware, a report detailing—
 - (a) the events leading up to his appointment, so far as he is aware of them;
 - (b) the disposal or the proposed disposal by him of any property of the Company and the carrying on or proposed carrying on by him of any business of the Company;
 - (c) the amounts of principal and interest payable to the secured creditors by whom or on whose behalf he was appointed;
 - (d) the amount (if any) likely to be available for the payment of other creditors; and
 - (e) a summary of any Statement of Affairs submitted to him.
- (2) The administrative receiver shall summon a meeting of creditors of the Company in accordance with Schedule 6 (*Meetings and Correspondence*) to consider the contents of his report referred to in subsection (1) and such meeting of creditors shall be conducted in accordance with Schedule 6 (*Meetings and Correspondence*).
- (3) An administrative receiver who makes default in complying with this Section, without reasonable excuse, commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

- (4) Anything which is required or permitted by or under this Part to be done at a meeting of creditors may be done by correspondence between the administrative receiver and creditors—
 - (a) in accordance with these Regulations (including Schedule 6 (*Meetings and Correspondence*)); and
 - (b) subject to any prescribed condition.
- (5) A reference in this Part to anything done at a meeting of creditors includes a reference to anything done in the course of correspondence in reliance on subsection (4).
- (6) A requirement to hold a meeting of creditors is satisfied by conducting correspondence in accordance with subsection (4).

PART 3 : WINDING-UP

Chapter 1 - General

172. Alternative modes of winding-up

The winding-up of a Company may be either voluntary or by the Court.

173. Concurrent proceedings

- (1) Subject to subsection (2), there may be a winding-up of a Company and a receiver appointed to the property of the Company at the same time.
- (2) When a Company is being wound up—
 - (a) any agency of a receiver for the Company is terminated;
 - (b) the liquidator's powers with respect to the property of the Company excludes any property to which a receiver has been appointed for the period of the receiver's appointment; and
 - (c) the liquidator may exercise any of his powers under Part 3 (*Winding-Up*) notwithstanding the appointment of a receiver.

Chapter 2 - Voluntary winding-up

174. Circumstances in which a Company may be wound up voluntarily

- (1) A Company may be wound up voluntarily—
 - (a) in circumstances as may be provided for in the Articles of the Company; or
 - (b) if the Company resolves by Special Resolution that it should be wound up voluntarily.
- (2) Before a Company passes a resolution for voluntary winding-up it must give at least five (5) business days' prior written notice of the proposed date for the passing of such resolution to the holder of any qualifying charge to which Section 21 (*Power to appoint*) applies (unless such holder consents in writing to the earlier passing of such resolution).

175. Declaration of solvency

- (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 meeting of the board of Directors make a declaration containing the information prescribed in paragraph 54 of Schedule 1, to the effect that they have made a full inquiry into the Company's affairs 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 at the official interest rate, within such period, not exceeding twelve (12) months from the commencement of the winding-up, as may be specified in the declaration.
- (2) Such a declaration must be made within the five (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.
- (3) Where a Director makes a declaration under this Section without having reasonable grounds for the opinion that the Company will be able to pay its debts in full, together with interest at the official interest rate, within the period specified, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

- (4) If the Company is wound up in pursuance of a resolution passed within five (5) weeks after the making of the declaration, and its debts (together with interest at the official interest rate) 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.

176. Distinction between “members’ voluntary winding-up” and “creditors’ voluntary winding-up”

A winding-up in the case of which a Directors’ declaration under Section 175 (*Declaration of solvency*) 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 3 - Members’ voluntary winding-up

177. Application of this Chapter

This Chapter applies in relation to a members’ voluntary winding-up.

178. Appointment of liquidator

In a members’ voluntary winding-up, the Company at a general meeting shall appoint one or more liquidators for the purpose of winding-up the Company’s affairs and distributing its property.

179. Directors’ powers

On the appointment of a liquidator all the powers of the Directors cease, except so far as the Company at a general meeting or the liquidator sanctions their continuance.

180. Vacancy in office of liquidator

If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the Company, the Company at a general meeting may, subject to any arrangement with its creditors, fill the vacancy. For that purpose, a general meeting may be convened by any member or, if there was more than one liquidator, by a continuing liquidator.

181. Progress report to members at year’s end

- (1) In the event of the winding-up of the Company continuing for more than one (1) year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—
- (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and
 - (b) send a copy of the progress report to the members and to the Registrar.
- (2) A progress report is not required for any period which ends after the liquidator has sent a final report to members under Section 182 (*Final meeting prior to dissolution*).
- (3) If the liquidator fails to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

182. Final meeting prior to dissolution

- (1) As soon as the Company's affairs are fully wound up, the liquidator shall make up an account of the winding-up, showing how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company for the purpose of laying before it the account, and giving an explanation of it.
- (2) Notice of the meeting shall be published in the Abu Dhabi Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one (1) month before it.
- (3) Within seven (7) days of the meeting, the liquidator shall send to the Registrar a copy of the account and a return of the meeting.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

183. Effect of Company's insolvency

- (1) If the liquidator is of the opinion that the Company will be unable to pay its debts in full within the period stated in the Directors' declaration under Section 175 (*Declaration of solvency*), he must summon a meeting of creditors, and shall give not less than seven (7) days' notice of the meeting.
- (2) Notice of the meeting shall be published in the Abu Dhabi Global Market in such manner as the liquidator thinks appropriate.
- (3) The liquidator shall also make out a Statement of Affairs of the Company and lay that statement before the creditors' meeting, at which the liquidator will attend and preside.
- (4) If the liquidator without reasonable excuse fails to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

184. Conversion to creditors' voluntary winding-up

As from the day on which the creditors' meeting is held under Section 183 (*Effect of Company's insolvency*), these Regulations have effect as if—

- (a) the Directors' declaration under Section 175 (*Declaration of solvency*) had not been made; and
- (b) the creditors' meeting and the general meeting of the Company at which it was resolved that the Company be wound up voluntarily were the meetings mentioned in Section 186 (*Meetings of members and creditors*),

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

Chapter 4 - Creditors' voluntary winding-up

185. Application of this Chapter

- (1) Subject to subsection (2), this Chapter applies in relation to a creditors' voluntary winding-up.
- (2) Sections 186 (*Meetings of members and creditors*) and 187 (*Appointment of liquidator*) do not apply where, under Section 184 (*Conversion to creditors' voluntary winding-up*), a members' voluntary winding-up has become a creditors' voluntary winding-up.

186. Meetings of members and creditors

- (1) The Company shall—
 - (a) cause a general meeting of the Company to be summoned at which the resolution for voluntary winding-up is to be proposed; and
 - (b) cause a meeting of its creditors to be summoned in accordance with the provisions of Schedule 6 (*Meetings and Correspondence*).
- (2) The Directors of the Company shall make out a Statement of Affairs of the Company and lay that statement before the creditors' meeting.
- (3) If the Company or any Director, each without reasonable excuse, fails to comply with this Section, they commit a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

187. Appointment of liquidator

- (1) The creditors and the Company at their respective meetings mentioned in Section 186 (*Meetings of members and creditors*) may nominate a person to be liquidator.
- (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.
- (3) The creditors' voluntary winding-up is deemed to commence at the time specified in Section 193 (*Commencement of winding-up*).

188. Directors' powers

On the appointment of a liquidator, all the powers of the Directors cease, except so far as the Liquidation Committee (or, if there is no such Liquidation Committee, the creditors) sanction their continuance.

189. Vacancy in office of liquidator

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 resolve at a meeting of creditors to fill the vacancy.

190. Progress report to members and creditors at year's end

- (1) If the winding-up of the Company continues for more than one year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—
 - (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and
 - (b) send a copy of the progress report to the members and creditors (other than opted-out creditors) of the Company and to the Registrar.
- (2) A progress report is not required for any period which ends after the liquidator has sent a final report to members and creditors under Section 191 (*Final meeting prior to dissolution*).
- (3) If the liquidator fails to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

191. Final meeting prior to dissolution

- (1) As soon as the Company's affairs are fully wound up, the liquidator shall make up an account of the winding-up, showing how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company and a meeting of the creditors (to be held on the same day) for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) Notice of each meeting shall be published in the Abu Dhabi Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one month before it.
- (3) Within seven (7) days of the meetings the liquidator shall send to the Registrar a copy of the account and a return of the meetings.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

Chapter 5 - Provisions applying to both kinds of voluntary winding-up

192. Notice of resolution to wind up

- (1) When a Company has passed a resolution for voluntary winding-up, the Company shall, within seven (7) days after the passing of the resolution, publish notice of the resolution in the Abu Dhabi Global Market in such manner as it thinks appropriate.
- (2) If default is made in complying with subsection (1), the Company and every officer of it who is in default commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

193. Commencement of winding-up

A voluntary winding-up is deemed to commence at the time of the passing of the resolution for voluntary winding-up by the Company at a general meeting.

194. Notice by liquidator of his appointment

- (1) The liquidator shall, within seven (7) days of his appointment, publish notice of his appointment in the Abu Dhabi Global Market in such manner as he thinks appropriate, and deliver to the Registrar for registration, a notice of his appointment.
- (2) If the liquidator fails, without reasonable excuse, to comply with subsection (1), he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

195. Effect on business and status of Company

- (1) 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) However, the corporate state and corporate powers of the Company, notwithstanding anything to the contrary in its Articles, continue until the Company is dissolved.

196. Avoidance of share transfers after winding-up resolution

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 Company's members made after the commencement of a voluntary winding-up, is void.

197. Court's power to control proceedings

- (1) If the Court, on the application of the liquidator in a voluntary winding-up, so directs, 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 terms as the Court may impose.
- (2) If from any cause whatsoever there is no liquidator acting, the Court may appoint a liquidator.

198. Saving for certain rights

The voluntary winding-up of a Company does not bar the right of any creditor or other person to apply to have it wound up by the Court.

198A. Acceptance of shares, etc. as consideration for sale of company property

- (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 Company's business or property is proposed to be transferred or sold to another company whether or not it is a Company within the meaning of the Companies Regulations 2020 ("the transferee company").
- (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, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.
- (3) The sanction required under subsection (2) is -
 - (a) in the case of a members' voluntary winding up, that of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
 - (b) in the case of a creditor's voluntary winding up, that of either the Court or the Liquidation Committee.
- (4) Alternatively to subsection (2), the liquidator may (with the sanction) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits, or receive any other benefit from the transferee company.
- (5) A sale or arrangement in pursuance of this Section is binding on members of the transferor limited liability partnership.
- (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 of the Company by the Court, the special resolution is not valid unless sanctioned by the Court.
- (7) If a special resolution of the Company has provided the sanction requisite for the liquidator under this Section, a member of the transferor company who did not vote in favour of providing the sanction required for the liquidator under this Section may express his dissent from it in writing addressed to the liquidator and left at the registered office of the Company within 7 days after the date on which that sanction was given, and require the liquidator either to abstain from carrying the arrangement so sanctioned into effect or to purchase his interest at a price to be determined by agreement or arbitration under this Section.

- (8) 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.

Chapter 6 - Compulsory winding-up

199. Circumstances in which a Company may be wound up by the Court

A Company may be wound up by the Court if—

- (a) the Company has by Special Resolution resolved that the Company be wound up by the Court;
- (b) the Company is unable to pay its debts;
- (c) the Court may make such an order pursuant to any provision of or under Abu Dhabi Global Market legislation; or
- (d) the Court is of the opinion that it is just and equitable that the Company should be wound up.

200. Definition of inability to pay debts

- (1) A Company is deemed unable to pay its debts—

- (a) If a creditor to whom the Company is indebted in a sum exceeding \$2,000 then due has served a written demand on the Company at its registered office in accordance with Part 4 of the ADGM Court Procedure Rules or, if that is not practicable or the Company has no registered office:
 - (i) by any other method permitted by Part 4 of the ADGM Court Procedure Rules; or
 - (ii) by any method as the Court may by order approve or direct, requiring the Company to pay the sum so due and the Company has for three (3) weeks thereafter neglected to pay the sum or agree terms in relation to its payment to the reasonable satisfaction of the creditor;
- (b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due.

- (2) A Company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the Company's current assets is less than the amount of its current liabilities, taking into account its contingent and prospective liabilities.

- (3) The money sum for the time being specified in subsection (1) is subject to increase or reduction by these Regulations; 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.

201. The statutory demand

- (1) A written demand served by a creditor on a Company under Section 200(1)(a) (*Definition of inability to pay debts*) of these Regulations is known in winding-up proceedings as a "**statutory demand**".

- (2) The statutory demand must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.
- (3) The statutory demand must include the following—
 - (a) the amount of the debt and the way in which it arises;
 - (b) an explanation of the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding-up of the Company;
 - (c) information as to how the debt may be paid and the time within which it must be complied with;
 - (d) a statement that the Company has the right to make an application to the Court for an injunction restraining the creditor from presenting or advertising a petition for the winding-up of the Company; and
 - (e) information as to the identity of a person whom the Company can contact to secure or compound the debt to the creditor's satisfaction, including an address and telephone number.

202. Application for winding-up

- (1) Subject to any provision of Abu Dhabi Global Market legislation to the contrary, a petition to the Court for the winding-up of a Company may only be presented by:
 - (a) the Company;
 - (b) the Directors;
 - (c) an administrative receiver;
 - (d) an administrator;
 - (e) any creditor or creditors (including any contingent or prospective creditor or creditors);
 - (f) a contributory or contributories; or
 - (g) any other person who under any enactment would be entitled to present a petition for the winding-up of the Company.
- (2) A contributory is not entitled to present a winding-up petition unless either—
 - (a) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least six (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; or
 - (b) he is a person who is liable under Section 221 (*Liability to contribute of past and present members*) to contribute to a Company's assets in the event of its being wound up; but in such a case, he may only petition on either of the grounds set out in Section 199(b) and (d) (*Circumstances in which a Company may be wound up by the Court*).

203. Petition for winding-up by the Financial Services Regulator or the Registrar

The Financial Services Regulator or the Registrar may present a petition to the Court for a Company to be wound up if the Financial Services Regulator or the Registrar is of the opinion that—

- (a) the Company is unable to pay its debts;
- (b) it is just and equitable that the Company should be wound up;
- (c) the Company has committed a serious contravention of any regulation of the Abu Dhabi Global Market; or
- (d) it is expedient in the interests of the Abu Dhabi Global Market that the Company should be wound up.

204. Presentation and service of petition

- (1) A winding-up order may be made by the Court upon the presentation by any relevant person of a petition.
- (2) The petition shall be filed in, and sealed by, the Court and served by the petitioner on the Company at its registered office (if the petitioner is not the Company) in accordance with Part 4 of the ADGM Court Procedure Rules or, if that is not practicable or the Company has no registered office:
 - (a) by any other met method permitted by Part 4 of the ADGM Court Procedure Rules; or
 - (b) by any method as the Court may be order approve or direct,following which a certificate of service and a certificate of compliance in the prescribed form are to be filed with the Court.
- (3) One copy of the petition shall be sent by the petitioner to:
 - (a) if the Company is an Authorised Person or Recognised Body and the petitioner is not the Financial Services Regulator, the Financial Services Regulator; or
 - (b) in all other cases, if the petitioner is not the Registrar, the Registrar.
- (4) If any Office-holder has been appointed in respect of the assets of the Company or any of them, a copy of the petition shall be sent by the petitioner to such Office-holder.
- (5) If the Company intends to oppose the petition, it must notify the Court of this fact not less than seven (7) days before the date fixed for the hearing.
- (6) Where a petition is filed at the instance of a Company's administrator the petition shall—
 - (a) be expressed to be the petition of the Company by its administrator;
 - (b) state the name of the administrator, the Court case number and the date that the Company entered administration; and
 - (c) where applicable, contain an application under Section 113 (*Court ending administration on application of administrator*), requesting that the appointment of the administrator shall cease to have effect.
- (7) Where a petition contains a request for the appointment of a person as liquidator in accordance with Section 210(3) (*Appointment of provisional liquidator or of liquidator*

following administration) the person whose appointment is sought shall, not less than two (2) business days before the return day for the petition, file in Court a report including particulars of—

- (a) a date on which he notified creditors of the Company, either in writing or at a meeting of creditors, of the intention to seek his appointment as liquidator, such date to be at least seven (7) business days before the day on which the report under this paragraph is filed; and
 - (b) details of any response from creditors to that notification, including any objections to his appointment.
- (8) The petition must be verified by a statement of truth. Where the petition is in respect of debts due to different creditors the debt to each creditor must be verified separately in the prescribed form.

205. Advertisement of petition

- (1) Notice of the petition shall be published in the Abu Dhabi Global Market in the manner prescribed in these Regulations, as applicable, or in such manner as directed by the Court:
- (a) if the petitioner is not the Company, not less than seven (7) business days after service of the petition on the Company, nor less than seven (7) business days before the day appointed for the hearing; or
 - (b) if the petitioner is the Company itself, not less than (7) business days before the day appointed for the hearing,

following which the petitioner shall file a certificate of compliance in the prescribed form with the Court.

- (2) The notice must state -
- (a) that a petition has been presented for the winding-up of the Company;
 - (b) the name and address of the petitioner;
 - (c) the date on which the petition was presented;
 - (d) the venue fixed for the hearing of the petition;
 - (e) the name and address of the insolvency practitioner (if any) whom the petitioner proposes for appointment as liquidator, or as provisional liquidator;
 - (f) the name and address of the petitioner's legal representatives (if any); and
 - (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give the petitioner notice of that intention, no later than 16.00 hours on the business day before the day appointed for the hearing.
- (3) The petitioner must prepare for the Court a list of the persons who have given notice under Section 205(2)(g) (*Advertisement of petition*) and the petitioner must provide a copy of the list to the Court in the prescribed form before the hearing commences.

206. Powers of Court on hearing of petition

- (1) On hearing a winding-up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit.

- (2) Where the Court orders that the Company be wound up, the Court shall identify in the winding-up order the person who is to act as liquidator or provisional liquidator of the Company, and that person shall take office immediately upon the order being made.

207. Notice of winding-up order

- (1) When a winding-up order has been made, the Court shall immediately:
- (a) give notice of the fact to the Company, the petitioner, the Financial Services Regulator (in the case of an Authorised Person or Recognised Body) and any other person represented at the hearing; and
 - (b) provide a sealed copy of the order to the liquidator;
- in accordance with paragraph 37 of Schedule 1 (Electronic delivery of documents to or by the Court), or in such other manner as the Court considers appropriate.
- (2) On the making of a winding-up order, the liquidator must within seven (7) days—
- (a) send a copy of the order to the Registrar; and
 - (b) publish notice of the order in the Abu Dhabi Global Market in such manner as he thinks fit.
- (3) If a liquidator fails without reasonable excuse to comply with subsection (2) he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

208. Commencement of winding-up

- (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) Where the Court makes a winding-up order by virtue of Section 18(1)(e) (*Powers of Court*), the winding-up is deemed to commence on the making of the order.
- (3) 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 the winding-up.

209. Consequences of winding-up order

- (1) 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 terms as the Court may impose.
- (2) After the presentation of a winding-up petition—
- (a) no person may attach, sequester or otherwise appropriate the assets of the Company, and any such activity is, unless the Court otherwise orders, void; and
 - (b) any disposition of the Company's property, and any transfer of shares, or alteration in the status of the Company's members is, unless the Court otherwise orders, void,

except that this subsection (2) shall only take effect if a winding-up order is made in respect of the Company on the winding-up petition and subsection (2)(b) has no effect

in respect of anything done by an administrator of a Company while a winding-up petition is suspended under Section 42(1)(b) (*Dismissal of pending winding-up petition*).

210. Appointment of provisional liquidator or of liquidator following administration

- (1) The Court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally to carry on such functions as the Court may confer on him. The powers of such a liquidator may be limited by the order appointing him.
- (2) When 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 terms as the Court may impose.
- (3) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the Court may appoint as liquidator of the Company the person whose appointment as administrator has ceased to have effect.
- (4) Where a liquidator is appointed in accordance with subsection (3) or upon registration of a notice under Section 122(2) (*Moving to creditors' voluntary liquidation*) and that person becomes aware of creditors not formerly known to him in his capacity as administrator, he shall send to those creditors a copy of any statement or report sent by him to creditors under Section 56 (*Administrator's proposals*), so noted as to indicate that it is being sent under this Section.

211. Power to stay winding-up

- (1) The Court may at any time after an order for winding-up is made, on the application of the liquidator, provisional liquidator, Financial Services Regulator, Registrar or any creditor or contributory, make an order staying the proceedings on such terms and conditions as the Court thinks fit.
- (2) The Company must, as soon as reasonably practicable, forward a copy of any order made under subsection (1) to the Registrar, the Financial Services Regulator or any other Office-holder, as applicable.
- (3) If the Company fails to comply with subsection (2), it commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (4) The Court may, before making an order, give notice of the application to the Financial Services Regulator or the Registrar, who may furnish the Court with a report with respect to any facts or matters which are in its opinion relevant to the application.

212. Progress report to contributories and creditors

- (1) If the winding-up of the Company continues for more than one (1) year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—
 - (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and
 - (b) send a copy of the progress report to contributories and creditors of the Company and to the Registrar.
- (2) If the liquidator fails to comply with subsection (1), he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

213. Duty to summon final meeting

- (1) If it appears to the liquidator of a Company that the winding-up of the Company is for practical purposes complete, the liquidator must summon a final meeting of the Company's creditors to receive the liquidator's report of the winding-up.
- (2) Notice of the meeting shall be published in the Abu Dhabi Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one (1) month before it.
- (3) Within seven (7) days of the meeting, the liquidator shall send to the Registrar a copy of the liquidator's report and a return of the meeting.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

Chapter 7 - Provisions of general application in winding-up

214. General functions in winding-up by the Court

The functions of the liquidator of a Company are to ensure that the property of the Company is collected or otherwise secured, realised and distributed to the Company's creditors and, if there is a surplus, to the persons entitled to it.

215. Property of the Company

- (1) The liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the Company is or appears to be entitled.
- (2) In these Regulations, "**property**" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent arising out of, or incidental to, property but does not include property held by the Company on trust for a person.
- (3) The liquidator or provisional liquidator shall take steps to discharge the obligations of the Company with respect to—
 - (a) client assets and client monies, in accordance with provision made by or under the Financial Services and Markets Regulations 2015 if the Company is an Authorised Person;
 - (b) trust property of the Company, in accordance with the terms of the trust; and
 - (c) where the Company has uncertified securities, the persons holding such securities that are specified in the register maintained in accordance with the Uncertified Securities Rules 2021.
- (4) When a Company is being wound up by the Court, the Court may, on the application of the liquidator, 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 thereupon the property to which the order relates vests accordingly.
- (5) Where a creditor has issued execution against the goods or land of a Company or has attached any debt due to it, and the Company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless

he has completed the execution or attachment before the commencement of the winding-up.

(6) However—

- (a) if a 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 he had notice is substituted, for the purpose of subsection (5), for the date of commencement of the winding-up;
- (b) a person who purchases in good faith under a sale by the enforcement agent charged with the execution of the writ any goods of a Company on which execution has been levied in all cases acquires a good title to them against the liquidator; and
- (c) the rights conferred by subsection (5) on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(7) For purposes of these Regulations—

- (a) an execution against goods is completed by seizure and sale, or by the making of a charging order under Section 114 (*Charging orders*) of the Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under Section 114 (*Charging orders*) of the Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

(8) In this section—

- (a) “**goods**” includes all chattels personal; and
- (b) “**enforcement agent**” means an individual who is authorised to act as an enforcement agent under the Section 122 (*Enforcement agents*) of the Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

216. Notification that Company is in liquidation

- (1) When a Company is being wound up, every invoice, order for goods or services or business letter (whether in hard copy, electronic or any other form) issued by or on behalf of the Company and all the Company’s websites, shall contain a statement that the Company is being wound up.
- (2) If the Company fails to comply with subsection (1), it and any officer who knowingly and wilfully authorises or permits the failure to comply, commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

217. Powers of liquidator

- (1) Any liquidator may exercise any of the powers specified in Schedule 4 (*Powers of Liquidator in a winding-up*).
- (2) Subsection (3) applies where, in the case of a creditors’ voluntary winding-up, a liquidator has been nominated by the Company.

- (3) The powers conferred on the liquidator by this Section shall not be exercised during the period before the holding of the creditors' meeting under Section 186 (*Meetings of members and creditors*), save for the power of the liquidator to do all such things as may be necessary for the protection or preservation of the Company's property.
- (4) If the liquidator fails without reasonable excuse to comply with subsection (3) he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (5) The following subsections apply where a Company's goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the enforcement agent charged with execution of the writ or other process, that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding-up has been passed.
- (6) The enforcement agent 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 execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying the charge.
- (7) If under an execution in respect of a judgment for a sum exceeding \$500 a Company's goods are sold or money is paid in order to avoid sale, the enforcement agent shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.
- (8) If within that time notice is served on the enforcement agent of a petition for the winding-up of the Company having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding-up, and an order is made or a resolution passed (as the case may be), the enforcement agent shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.
- (9) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.
- (10) In this section—
 - (a) "**goods**" includes all chattels personal; and
 - (b) "**enforcement agent**" means an individual who is authorised to act as an enforcement agent under the Section 122 (*Enforcement agents*) of the Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.
- (11) The money sum for the time being specified in subsection (7) is subject to increase or reduction by rules made by the Registrar.

218. Power to disclaim onerous property

- (1) The liquidator may, by giving notice which identifies the property disclaimed, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this Section—
 - (a) any unprofitable contract; and

- (b) any other property of the Company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this Section—
 - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the Company in or in respect of the property disclaimed; but
 - (b) does not, except so far as is necessary for the purpose of releasing the Company from any liability, affect the rights or liabilities of any other person.
- (4) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Section is deemed a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding-up.
- (5) The liquidator must send a copy of the notice of disclaimer to the Registrar and to every person who (to his knowledge)—
 - (a) claims an interest in the disclaimed property; or
 - (b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.
- (6) Any disclaimer of property by the liquidator does not take effect unless a copy of the notice of disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the Company as underlessee or mortgagee.
- (7) Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer.
- (8) The liquidator must include in the liquidator's records of the insolvency a record of—
 - (a) the persons to whom that liquidator has sent or given copies of the notice of disclaimer under this Section, showing their names and addresses and the nature of their respective interests;
 - (b) the dates on which the copies of the notice of disclaimer were sent or given to those persons; and
 - (c) the date on which a copy of the notice of disclaimer was sent to the Registrar.
- (9) If the liquidator fails without reasonable excuse to comply with subsection (5) he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

219. Liquidator may summon meetings

- (1) The liquidator may summon meetings of creditors or contributories for the purposes of reporting on matters in the winding-up or ascertaining their wishes in accordance with the provisions of Schedule 6 (*Meetings and Correspondence*) and any such meetings shall be conducted in accordance with such provisions.

- (2) Anything which is required or permitted by or under this Part to be done at a meeting of creditors may be done by correspondence between the liquidator and the creditors—
 - (a) in accordance with these Regulations (including Schedule 6 (*Meetings and Correspondence*)); and
 - (b) subject to any prescribed condition.
- (3) A reference in this Part to anything done at a meeting of creditors includes a reference to anything done in the course of correspondence in reliance on subsection (2).
- (4) A requirement to hold a meeting of creditors is satisfied by conducting correspondence in accordance with subsection (2).

220. Settling list of contributories, debts and calls

- (1) At any time after a winding-up order has been made, the Court—
 - (a) 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 property to be collected and applied in discharge of its liabilities;
 - (b) may 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 to the Company, exclusive of any money payable by him by virtue of any call;
 - (c) may 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 the 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; and
 - (d) shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.
- (2) In a winding-up by the Court, the powers of the Court described in subsection (1) are discharged by the liquidator as an officer of the Court, subject to its control.
- (3) In a voluntary winding-up, the liquidator may exercise the Court's powers described in subsection (1).

221. Liability to contribute of past and present members

- (1) Subject to subsection (2), when a Company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for the payment of its debts and liabilities, and the expenses of the winding-up, and for the adjustment of the rights of contributories among themselves.
- (2) A past or present member is not liable to contribute—
 - (a) if he has ceased to be a member for one (1) year or more before the commencement of the winding-up;
 - (b) in respect of any debt or liability of the Company contracted after he ceased to be a member;
 - (c) if it appears to the Court that the existing members are able to satisfy the contributions required to be made by them;

- (d) in the case of a Company limited by shares, a sum more than an amount (if any) unpaid on the shares in respect of which he is liable as a past or present member; and
 - (e) in the case of a Company limited by guarantee, in excess of the amount undertaken to be contributed by him to the Company's assets in the event of the Company being wound up.
- (3) A sum due to any member of the Company (in his character as 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 rights of contributories among themselves.

222. Limited Company formerly unlimited

- (1) This Section applies in the case of a Company being wound up which was at some former time registered as an unlimited Company but has re-registered as a limited Company.
- (2) Notwithstanding Section 221(2)(a) (*Liability to contribute of past and present members*), a past or present member of the Company, who was a member of the Company at the time of re-registration, is liable to contribute to the assets of the Company in respect of debts and liabilities contracted before re-registration if the winding-up commences within the period of three (3) years beginning with the day on which the Company was re-registered.
- (3) Subject to Section 221(2)(a) (*Liability to contribute of past and present members*) and subsection (2) if no persons who were members of the Company at the time of reregistration are existing members of the Company, a person who at the time of re-registration 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 under Section 221(2)(c) (*Liability to contribute of past and present members*).
- (4) There is no limit on the amount which a person who, at the time of re-registration, was a past or present member of the Company is liable to contribute as above.

223. Unlimited Company formerly limited

- (1) This Section applies in the case of a Company being wound up which was at some former time registered as a limited Company 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 as an unlimited Company 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.

224. Company's books to be evidence

Where a Company is being wound up, all books and papers of the Company and of the liquidators are, as between the contributories of the Company, *prima facie* evidence of the truth of all matters purporting to be recorded in them.

225. Distribution of Company's property

(1) Subject to Section 263 (*Insolvency of clearing and settlement intermediaries or Recognised Bodies; client assets*), the Company's assets available for payment of general creditors shall on the winding-up be applied in satisfaction of the following liabilities in the order of priority of—

- (a) all expenses properly incurred in the winding-up in accordance with Section 226 (*General rule as to priority of expenses*);
- (b) any Preferential Debts of the Company in accordance with Section 227 (*Preferential Debts*);
- (c) the remainder of the Company's liabilities in accordance with Section 228 (*Unsecured debts of insolvent Company to rank equally*); and

subject to that application, shall (unless the Articles otherwise provide) be distributed among the members according to their rights and interests in the Company.

226. General rule as to priority of expenses

(1) The expenses of the winding-up are payable out of the assets in the following order of priority—

- (a) expenses which are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on him by the Court;
- (b) expenses or costs which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the Company or otherwise relating to the conduct of any legal proceedings which he has power to bring or defend whether in his own name or the name of the Company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;
- (c) any fees payable to the Court or to any official body in relation to the proceedings;
- (d) the cost of any security provided by a provisional liquidator or liquidator in accordance with these Regulations;
- (e) the remuneration of the provisional liquidator (if any);
- (f) any deposit lodged on an application for the appointment of a provisional liquidator;
- (g) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the Court;
- (h) any amount payable to a person employed to assist in the preparation of a Statement of Affairs or of accounts;
- (i) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a Statement of Affairs, or for an extension of time for submitting such a statement;
- (j) any necessary disbursements by the liquidator in the course of his administration (including any expenses incurred by members of the Liquidation Committee or their representatives and allowed by the liquidator under Schedule 7 (*Creditors' Committees*));

- (k) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the Company, as required or authorised by these Regulations;
 - (l) the remuneration of the liquidator; and
 - (m) any other expenses properly chargeable by the liquidator in carrying out his functions in the liquidation.
- (2) 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.
 - (3) Nothing in these Regulations affects the power of any Court, in proceedings by or against the Company, to order costs to be paid by the Company, or the liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid.

227. Preferential Debts

- (1) Preferential Debts rank equally among themselves after the expenses of the winding-up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.
- (2) “**Preferential Debts**” means the debts listed in Schedule 8 (*Preferential Debts*), and references to preferential creditors shall be read accordingly.

228. Unsecured debts of insolvent Company to rank equally

- (1) Unsecured debts (including all or any part of a secured debt which is treated as unsecured in accordance with Schedule 5 (*Proofs and Distribution*) in a winding-up), other than the expenses of the winding-up and Preferential Debts, rank equally between themselves in the winding-up and, after the Preferential Debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (2) Subsection (1) applies whether or not the Company is unable to pay its debts.

229. Fixing of liquidator’s remuneration

The liquidator is entitled to receive remuneration for his services as such. The relevant provisions in Schedule 12 (*Remuneration*) shall apply in the determination of the remuneration of the liquidator.

230. Liquidation committee

- (1) In any Insolvency Proceedings within this Part 3, the creditors may, at any meeting convened by the Office-holder, appoint a Liquidation Committee to exercise the functions conferred on it by these Regulations.
- (2) If such a Liquidation Committee is appointed, the relevant provisions of Schedule 7 (*Creditors’ Committees*) shall apply.
- (3) This Section does not apply to a members’ winding-up.

231. Notice requiring Statement of Affairs

- (1) Where a liquidator is required to produce a Statement of Affairs under Section 183(3) (*Effect of Company’s insolvency*) he shall do so using the prescribed form. Where a liquidator determines that it is required, he shall send a notice to each relevant person

whom he determines appropriate requiring him or them to prepare and submit a statement of the Company's affairs.

- (2) The notice shall inform each of the relevant persons of—
 - (a) the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) the time within which the statement must be delivered;
 - (c) the effect of Section 232(5) (*Statement of Company's affairs*); and
 - (d) the application to him, and each other relevant person, of Section 255 (*Duty to co-operate with Office-holder*).
- (3) The liquidator shall furnish each relevant person to whom he has sent notice containing the prescribed information with the forms required for the preparation of the Statement of Affairs.
- (4) For the purposes of subsection (1) above "**relevant person**" means—
 - (a) a person who is or has been an officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters winding-up;
 - (c) a person employed by the Company during that period; and
 - (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (5) For the purposes of subsection (4) a reference to employment is a reference to employment through a contract of employment or a contract for services.

232. Statement of Company's Affairs

- (1) The Statement of Affairs must—
 - (a) be verified by a statement of truth by each relevant person in accordance with the ADGM Court Procedure Rules;
 - (b) be in the prescribed form containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (2) A person required to submit a Statement of Affairs under Section 231 (*Notice requiring Statement of Affairs*) must do so before the end of the period of twenty-one (21) days beginning with the day after that on which the prescribed notice of the requirement is given to him by the liquidator.
- (3) The liquidator may—
 - (a) release a person from a requirement to provide a Statement of Affairs under Section 231 (*Notice requiring Statement of Affairs*); or

- (b) extend the period specified in subsection (2) (whether before or after expiry).
- (4) If the liquidator refuses to act under subsection (3), the Court, if it thinks fit, may exercise it.
- (5) If a person fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

233. Statement of Company's affairs by Directors

- (1) Where a Director is required to produce a Statement of Affairs under Section 186(2) (*Meetings of members and creditors*) he shall do so using the prescribed form.
- (2) The Directors shall cause that statement to be laid before the creditors' meeting and appoint one of their number to preside over the meeting.
- (3) The statement of affairs must—
 - (a) be verified by a statement of truth by some or all of the Directors in accordance with the ADGM Court Procedure Rules;
 - (b) be in the prescribed form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (4) If a Director fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

234. Verification and filing

- (1) The liquidator of a Company may require any relevant person to submit a statement of concurrence in the prescribed form stating that he concurs in the Statement of Affairs. Where the liquidator of a Company does so, he shall inform each person making the Statement of Affairs of that fact.
- (2) The Statement of Affairs shall be delivered by the relevant person or persons making the statement of truth, together with a copy, to the liquidator of the Company. The relevant person or persons shall also deliver a copy of the Statement of Affairs to all those persons whom the liquidator of the Company has required to make a statement of concurrence.
- (3) A person required to submit a statement of concurrence shall do so before the end of the period of five (5) business days (or such other period as the liquidator of the Company may agree) beginning with the day on which the Statement of Affairs being concurred with is received by him.
- (4) A statement of concurrence may be qualified in respect of matters dealt with in the Statement of Affairs, where the maker of the statement of concurrence is not in agreement with the relevant person or persons, or he considers the Statement of Affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

- (5) Every statement of concurrence shall be verified by a statement of truth and be delivered to the liquidator of the Company by the person who makes it, together with a copy of it.
- (6) Subject to Section 235 (*Limited disclosure*), the liquidator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the Statement of Affairs and any statement of concurrence.

235. Limited disclosure

- (1) Where the liquidator of a Company thinks that it would prejudice the conduct of the liquidation or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the Company's affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.
- (2) The Court may, on such liquidation, order that the statement or, as the case may be, the specified part of it, shall not be filed with the Registrar.
- (3) The liquidator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the order and the Statement of Affairs (to the extent provided by the order) and any statement of concurrence.
- (4) If a creditor seeks disclosure of a Statement of Affairs or a specified part of it in relation to which an order has been made under this Section, he may apply to the Court for an order that the liquidator of a Company disclose it or a specified part of it. The application shall be supported by written evidence in the form of a witness statement.
- (5) The applicant shall give the liquidator of a Company notice of his application at least three (3) business days before the hearing.
- (6) The Court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.
- (7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the liquidator of a Company shall, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (8) The liquidator of a Company shall, as soon as reasonably practicable after the making of an order under subsection (7), file with the Registrar a copy of the Statement of Affairs to the extent provided by the order.
- (9) The provisions of the ADGM Court Procedure Rules relating to disclosure and inspection of documents shall not apply to an application under this Section.

236. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the liquidator under Section 232 (*Statement of Company's Affairs*) to give a release from the obligation imposed by Section 231(1) (*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.
- (2) A relevant person may, if he requests a release or extension of time and it is refused by the liquidator, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five

(5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.

- (4) The relevant person shall, at least fourteen (14) days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The liquidator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.
- (6) If such a report is filed, a copy of it shall be sent by the liquidator to the relevant person, not later than five (5) business days before the hearing.
- (7) A sealed copy of any order made on the application shall be provided by the Court to the relevant person and the liquidator in accordance with paragraph 37 of Schedule 1 (*Electronic delivery of documents to or by the Court*).
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the winding-up.

237. Expense of Statement of Affairs

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the liquidator as an expense of the winding-up, any expenses incurred by the relevant person in so doing which the liquidator considers reasonable.
- (2) Any decision by the liquidator under this Section is subject to appeal to the Court.
- (3) Nothing in this Section relieves a relevant person from any obligation with respect to the preparation, verification and submission of the Statement of Affairs, or to the provision of information to the liquidator.

238. Submission of accounts

- (1) The liquidator shall be entitled to demand from an officer of the Company access to and copies of the accounts and the books and records of the Company of such nature and for such period as he sees fit.
- (2) Where a person is required to furnish accounts under subsection (1), the liquidator may authorise an allowance, payable out of the assets of the Company, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

239. Further disclosure

The liquidator may at any time require any person to submit (in writing) further information amplifying, modifying or explaining any matter contained in a Statement of Affairs, or in accounts submitted in pursuance of these Regulations.

240. Removal or resignation of liquidator

- (1) The Court may, on cause shown, remove a liquidator or provisional liquidator and appoint another.

- (2) A liquidator may only resign his office if he ceases to be an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) or there is some conflict of interest or change of personal circumstance which precludes or makes impracticable the further discharge by him of the duties of liquidator.
- (3) A liquidator may resign his office by giving twenty-eight (28) days' notice of his resignation to the members and creditors of the Company and to the Registrar, together with a progress report providing an account of his acts and dealings, and of the conduct of the winding-up, since his last progress report or, if there is no such progress report, since his appointment.

241. Reference of questions to Court

- (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up of a Company.
- (2) In addition, the Court may, on the liquidator's application, relieve him of any duty imposed on him by these Regulations, or authorise him to carry out the duty in a way other than as required by these Regulations.
- (3) In considering whether to act under subsection (2), the Court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or members, or any particular class of them.
- (4) The Court may make such order on the application as it thinks just.

242. Meetings to ascertain wishes of creditors or contributories

- (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 any sufficient evidence); and
 - (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors, members or contributories to be called, held and conducted, or for resolutions to be proposed by correspondence, in accordance with Schedule 6 (*Meetings and Correspondence*) or in such other 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.

Chapter 8 - Distributions to creditors

243. Distributions to creditors

Schedule 5 (*Proofs and Distribution*) shall apply to distributions made or proposed to be made by the liquidator and to creditors proving their debts.

PART 4 : PROTECTION OF ASSETS IN LIQUIDATION AND ADMINISTRATION

Chapter 1 - Contraventions by Directors and others

244. Fraud in anticipation of winding-up or insolvent administration

- (1) When a Company is ordered to be wound up by the Court, or passes a resolution for voluntary winding-up or enters insolvent administration, any person, being a past or present officer of the Company, commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if, within the twelve (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 or paper affecting or relating to the Company's property or affairs;
 - (d) made any false entry in any book or 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),
- in each case with the intention of defrauding the creditors of the Company or concealing the state of affairs of the Company from any person, or to defeat the law.
- (2) Subsection (1) is deemed to also apply to such a person if, within the twelve (12) month period, he has been privy to the doing by others of any of the things mentioned in subsection (1) with the requisite intent.

245. Transactions in fraud of creditors

- (1) When a Company is ordered to be wound up by the Court or passes a resolution for voluntary winding-up or enters insolvent administration, a person commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he, 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 two (2) months before, the date of any unsatisfied judgment or order for the payment of money obtained against the Company.
- (2) A person is not guilty of a contravention if—
- (a) he carried out the conduct under subsection (1)(a) above more than five years before the commencement of the winding-up or entry into insolvent administration; or

- (b) he proves that, at the time of the conduct constituting a breach of these Regulations he had no intent to defraud the Company's creditors.

246. Misconduct in course of winding-up or insolvent administration

When a Company is being wound up or has entered insolvent administration, a past or present officer of a Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator or administrator, as the case may be, all the Company's property, and how and to whom and for what consideration and when the Company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the Company's business);
- (b) does not deliver up to the liquidator or administrator, as the case may be (or as he directs), all such part of the Company's property 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 administrator, as the case may be, (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 or administration, fails to inform the liquidator or administrator, as the case may be, as soon as practicable;
- (e) after the commencement of the winding-up or administration, prevents the production of any book or paper relating to the Company's property or affairs; or
- (f) after the commencement of the winding-up or administration, he attempts to account for any part of the Company's property by fictitious losses or expenses,

and, except in the case of paragraph (f), he does so with the intention of defrauding creditors of the Company.

247. Falsification of Company's books

When a Company is being wound up or has entered insolvent administration, an officer or contributory of the Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he destroys, mutilates, alters or falsifies any books, papers or securities, or 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.

248. Material omissions from statement relating to Company's affairs

When a Company is being wound up or has entered insolvent administration, any past or present officer of the Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if he makes any material omission in any statement relating to the Company's affairs (including a Statement of Affairs) with the intention of defrauding the creditors of the Company.

249. False representations to creditors

Any past or present officer of the Company commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule if—

- (a) when a Company is being wound up or has entered insolvent administration, he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the Company's creditors or any of them to an agreement with reference to the Company's affairs or to the winding-up or administration; or
- (b) prior to the winding-up or administration, he has made any false representation or committed any other fraud for that purpose.

250. Summary remedy against delinquent officers or liquidators

- (1) Subsection (3) 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) is a liquidator or administrative receiver of the Company; or
- (c) 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) Subsection (1) includes, in the case of a person who has acted as a liquidator of the Company, any misfeasance or breach of any fiduciary duty in connection with the carrying out of his functions as a liquidator of the Company.
- (3) The Court may, on the application of the Registrar, the liquidator or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him to—
- (a) 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) contribute such sum to the Company's assets by way of compensation in respect of misfeasance or breach of fiduciary or other duty as the Court thinks just.

251. Fraudulent trading

- (1) If in the course of the winding-up of a Company or while it is in administration 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 or the administrator, as the case may be, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned are liable to make such contributions (if any) to the Company's assets as the Court thinks proper.

252. Wrongful trading

- (1) Subject to subsection (3) below, if in the course of the winding-up of a Company or while it is in administration it appears that subsection (2) applies in relation to any person being a past or present Director of the Company, the Court, on the application of the relevant Office-holder, may declare that person is to be liable to make such contribution (if any) to the Company's assets as the Court thinks fit.
- (2) This subsection (2) applies if—
 - (a) the Company has gone into an insolvent liquidation or has entered insolvent administration;
 - (b) at some time before the commencement of the winding-up of the Company or before the Company entered administration, as the case may be, the person knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation or entering insolvent administration; and
 - (c) the person was a Director of the Company at that time.
- (3) Subsection (1) shall not apply to any person if the Court is satisfied that after the Director first knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation, he took every step with a view to minimising the potential loss to the Company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) he ought to have taken.
- (4) For the purposes of this Section, the facts which a Director of the Company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, 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 (including functions which he does not carry out but which have been entrusted to him); and
 - (b) the general knowledge, skill and experience that Director has.
- (5) This Section is without prejudice to Section 251 (*Fraudulent trading*).
- (6) In this Section, Director includes a shadow director.

253. Proceedings under Sections 251 and 252

Where the Court makes a declaration under either Section 251 (*Fraudulent trading*) or Section 252 (*Wrongful trading*), it has wide powers to give such further directions as it thinks proper for giving effect to the declaration.

253A Power to assign

- (1) This section applies in the case of a company where—
 - (a) the company enters administration, or
 - (b) the company goes into liquidation;and "the office-holder" means the administrator or the liquidator, as the case may be.

- (2) The office-holder may assign a right of action, including the proceeds of an action, arising under or by virtue of any of the following—
 - (a) section 251 (fraudulent trading);
 - (b) section 252 (wrongful trading);
 - (c) section 257 (transactions at an undervalue);
 - (d) section 258 (preferences).

Chapter 2 - Powers of Office-holders to obtain information

254. Getting in the Company's property

- (1) This Section applies in the case of a Company where—
 - (a) the Company enters administration;
 - (b) the Company becomes subject to a Deed of Company Arrangement;
 - (c) an administrative receiver is appointed or (but only for the purposes of subsection (4)) a receiver is appointed;
 - (d) the Company goes into liquidation; or
 - (e) a provisional liquidator is appointed.
- (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, on application by the relevant Office-holder, 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 Office-holder.
- (3) If it appears to the Court, on consideration of any evidence obtained pursuant to Section 256 (*Inquiry into Company's dealings*), that any person is indebted to the Company, the Court may, on the application of the relevant 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.
- (4) 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,

the Office-holder 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 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.

255. Duty to co-operate with Office-holder

- (1) Where an Office-holder has been appointed to a Company, he may require any of the persons identified in subsection (2) to—
 - (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 commencement of Insolvency Proceedings reasonably require; and

- (b) attend on the Office-holder at such times as the latter may reasonably require.
- (2) The persons who must co-operate with the Office-holder are—
- (a) those who are or have at any time been a Director or secretary of the Company;
 - (b) those who have taken part in the formation of the Company at any time;
 - (c) those who are or have been at any time in the employment of the Company;
 - (d) those who are or have at any time been a Director or secretary of, or in the employment of, another Company which is or was at any time a Director or secretary of the Company; and
 - (e) in the case of a Company being wound up by the Court, any person who has acted as receiver, administrator, administrative receiver, provisional liquidator or liquidator of the Company.
- (3) A person who fails to comply with this Section, without reasonable excuse, commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.

256. Inquiry into Company's dealings

On the application of the Office-holder, the Court may order any person involved with the Company to appear before it or to produce to it or to the Office-holder an account of his dealings with the Company contained in a witness statement verified by a statement of truth including any information concerning the promotion, formation, business, dealings, affairs or property of the Company or any books, papers or records in his possession or under his control relating to the Company or to any such dealings. A person involved with the Company shall include a Director or secretary of the Company, any person known or suspected to have in his possession any property of the Company or supposed to be indebted to the Company and any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the Company.

Chapter 3 - Voidable transactions

257. Transactions at an undervalue

- (1) Where a Company is in administration or winding-up and has at a relevant time (as defined in Section 259 (*Relevant time*)) entered into a transaction with any person at an undervalue, the Court may, on application of the administrator of the Company or the liquidator, make an order restoring the position to what it would have been if the Company had not entered into that transaction.
- (2) A Company enters into a transaction with a person at an undervalue if it—
 - (a) makes a gift to that person or otherwise receives no consideration under the transaction; or
 - (b) receives consideration under the transaction with a value, in money or money's worth, which is significantly less than the value, in money or money's worth, of the consideration provided by the Company.

- (3) The Court shall not make an order under subsection (1) in respect of a transaction at an undervalue if it is satisfied—
 - (a) that the Company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the Company.
- (4) Where a Company has entered into a transaction at an undervalue with another person and the Court is satisfied the entry into the transaction by the Company was for the purpose of—
 - (a) putting assets beyond the reach of a person who is making, or may at some time make a claim against it; or
 - (b) otherwise prejudicing the interests of such a person in relation to a claim which he is making or may make,

the Court may make an order restoring the position to what it would have been if the Company had not entered into that transaction or protecting the interests of any victim of the transaction but having regard to the interests of persons who acquired any interest in property in good faith, for value and without notice of the relevant circumstances.
- (5) An application under subsection (4) shall only be made by a liquidator or administrator of the Company or (with leave of the Court) a victim of the transaction.
- (6) References to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it.

258. Preferences

- (1) Where a Company is in administration or winding-up and has at a relevant time (as defined in Section 259 (*Relevant time*)) given a preference to any person, the Court may, on application of the administrator of the Company or the liquidator, make an order restoring the position to what it would have been if the Company had not given that preference.
- (2) 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.
- (3) The Court shall not make an order under subsection (1) 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 put the person in the better position described in subsection (2)(b).
- (4) A Company which has given a preference to a Connected Person (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 a desire to put the Connected Person in the better position described in subsection (2)(b).

259. Relevant time

- (1) 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 is given—
 - (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is a Connected Person (otherwise than by reason only of being its employee), at a time in the period of two (2) years ending with the onset of insolvency;
 - (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 six (6) months ending with the onset of insolvency;
 - (c) in either case, at a time between the making of an administration application in respect of the Company and the making of an administration order on that application;
 - (d) in either case, at a time between the filing with the Court of a copy of a notice of intention to appoint an administrator under Part 1 (*Administration*) and the making of an appointment under that Part; and
 - (e) in either case, at a time between the presentation of a petition for the making of a winding-up order in relation to the Company and the making of such an order on that petition.
- (2) Where a Company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsections (1)(a) or (b) above, that time is not a relevant time for the purposes of Sections 257 (*Transactions at an undervalue*) and 258 (*Preferences*) unless the Company—
 - (a) is at that time unable to pay its debts within the meaning of Section 200 (*Definition of inability to pay debts*); or
 - (b) becomes unable to pay its debts within the meaning of Section 200 (*Definition of inability to pay debts*) in consequence of the transaction or preference, but the requirements of this subsection (2) 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 a Connected Person.
- (3) In this Part 4 (*Protection of Assets in Liquidation and Administration*), the “**onset of insolvency**” means—
 - (a) in a case where Section 257 (*Transactions at an undervalue*) or 258 (*Preferences*) applies by reason of an administrator of a Company being appointed by an administration order, the date on which the administration application is made;
 - (b) in a case where Section 257 (*Transactions at an undervalue*) or 258 (*Preferences*) applies by reason of an administrator of a Company being appointed under Part 1 (*Administration*) following filing with the Court of a copy of a notice of intention to appoint under that Part, the date on which the copy of the notice is filed;
 - (c) in a case where Section 257 (*Transactions at an undervalue*) or 258 (*Preferences*) applies by reason of an administrator of a Company being appointed otherwise than as mentioned in paragraphs (a) or (b), the date on which the appointment takes effect;

- (d) in a case where Section 257 (*Transactions at an undervalue*) or 258 (*Preferences*) applies by reason of a Company going into liquidation at a time when either—
 - (i) the appointment of an administrator, or
 - (ii) the Deed of Company Arrangement executed by the Companyceases to have effect, the date on which the Company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed); and
- (e) in a case where Section 257 (*Transactions at an undervalue*) or 258 (*Preferences*) applies by reason of a Company going into liquidation at any other time, the date of the commencement of winding-up.

PART 5 : APPLICATION OF INSOLVENCY LAW TO AUTHORISED PARTICIPANTS AND OTHER ENTITIES

Chapter 1 - Application of these Regulations to certain entities

260. Limited Liability Partnerships

- (1) Subject to subsection (2), the provisions of these Regulations shall apply to a Limited Liability Partnership.
- (2) These Regulations shall apply to a Limited Liability Partnership, except where the context otherwise requires, with the following modifications—
 - (a) references to a Company shall include references to a Limited Liability Partnership;
 - (b) references to a Director or to an officer of a Company shall include references to a member or a designated member of a Limited Liability Partnership or any other person designated under a Limited Liability Partnership Agreement as fulfilling the managerial functions of a member or a designated member of a Limited Liability Partnership;
 - (c) references to the Companies Regulations 2020 shall include references to the equivalent provisions of the Limited Liability Partnerships Regulations (if any) as apply to a Limited Liability Partnership;
 - (d) references to the Articles of a Company shall include references to a Limited Liability Partnership Agreement of a Limited Liability Partnership;
 - (e) the modifications set out in Schedule 13 (Modifications to the Insolvency Regulations for Limited Liability Partnerships); and
 - (f) such further modifications as the context requires for the purpose of giving effect to these Regulations as applied by this Section.

261. Protected Cell Companies

- (1) Subject to subsection (2), the provisions of these Regulations shall apply to a Protected Cell Company.
- (2) These Regulations shall apply to a Protected Cell Company, except where the context requires, with the following modifications—
 - (a) Part 1 (*Administration*) and Part 2 (*Receivership*) of these Regulations shall not apply to a Protected Cell Company;
 - (b) the modifications contained in the provisions of Schedule 11 (*Supplemental provisions applicable to Protected Cell Companies*);
 - (c) references to a Company shall include references to a Protected Cell Company; and
 - (d) such further modifications as the context requires for the purpose of giving effect to these Regulations as applied by this Section.

262. Powers of the Board

The Board may, by any other regulations, orders or rules, provide that such provisions of these Regulations as may be specified in such regulations, orders or rules shall

apply in relation to entities other than Companies with such modifications as may be so specified.

Chapter 2 - Conflict with other Abu Dhabi Global Market legislation

263. Insolvency of clearing and settlement intermediaries or Recognised Bodies; client assets

- (1) Any provision of the rules of a Recognised Body relating to the finality of acquisitions or dispositions effected pursuant to such rules shall—
 - (a) to the extent of any inconsistency with any other applicable law, regulation, order or rule, prevail in respect of determining claims to assets held by, on behalf of, or subject to the control of, such Recognised Body; and
 - (b) have effect and prevail over these Regulations and any other insolvency legislation of the Abu Dhabi Global Market notwithstanding the commencement of an Insolvency Proceeding in respect of such Recognised Body or any party to a contract for the acquisition or disposal of an asset to which such rules apply.
- (2) The rules relating to client assets and client monies applicable to Authorised Persons shall not be regarded as invalid on the ground of inconsistency with these Regulations or any other insolvency legislation of the Abu Dhabi Global Market relating to the distribution of property of a Company on an administration, Deed of Company Arrangement or a winding-up and those rules shall, to the extent of any inconsistency, prevail.
- (3) To the extent of any inconsistency with the Uncertified Securities Rules 2021 and these Regulations or any other insolvency legislation of the Abu Dhabi Global Market, the Uncertified Securities Rules 2021 shall prevail.

264. Alteration, Suspension or Disapplication of Regulations in relation to regulated entities

Any provision of these Regulations may be altered, supplemented, suspended or disapplied in respect of persons regulated under the Financial Services and Markets Regulations 2015 or other legislation relating to persons effecting or carrying out contracts of insurance, banking business settlement or the provision of any other financial services.

PART 6 : CROSS-BORDER INSOLVENCY

Chapter 1 - Winding-up of non-Abu Dhabi Global Market Companies

265. Application of this Part to “unregistered company”

For the purposes of this Part 6 (*Cross-border Insolvency*), “unregistered company” includes an association or a non-Abu Dhabi Global Market Company as registered pursuant to the Commercial Licensing Regulations 2015 but does not include a Company within the meaning of the Companies Regulations 2020.

266. Winding-up of unregistered companies

- (1) Subject to the provisions of this Part 6 (*Cross-border Insolvency*), any unregistered company may be wound up under these Regulations and all the provisions of these Regulations about winding-up apply to an unregistered company with the modifications set out in this Part 6 (*Cross-border Insolvency*).
- (2) All the provisions of these Regulations about receivers and administrative receivers apply to an unregistered company if the instrument by virtue of which the receiver or administrative receiver is appointed is expressed to be governed by Abu Dhabi Global Market legislation.
- (3) An unregistered company may only be wound up under these Regulations by the Court in accordance with this Section.
- (4) An unregistered company may only be wound up by these Regulations if—
 - (a) it has a sufficient connection with the Abu Dhabi Global Market, which may (but does not have to) consist of it owning assets located within the Abu Dhabi Global Market;
 - (b) there is a reasonable prospect that the winding-up order will benefit the persons applying for the winding-up order; and
 - (c) the Court has jurisdiction over one or more persons interested in the distribution of the assets of such unregistered company.
- (5) The circumstances in which an unregistered company may be wound up are as follows—
 - (a) if the unregistered 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 unregistered company is unable to pay its debts; or
 - (c) if the Court is of the opinion that it is just and equitable that the unregistered company should be wound up.
- (6) A winding-up of an unregistered company under this Part 6 (*Cross-border Insolvency*) shall be conducted on a universal basis and shall extend to all property and rights of the unregistered company worldwide in so far as the liquidator is able to enforce against such property and rights located outside of the Abu Dhabi Global Market.
- (7) Where foreign proceeding and winding-up proceedings under this Section are taking place concurrently regarding an unregistered company, the liquidator may apply to Court at any time for directions on—
 - (a) the conduct of the winding-up proceedings and if such proceedings are to be conducted as ‘ancillary proceedings’ to the foreign proceedings; and

- (b) the realisation of assets located in the Abu Dhabi Global Market and any remittal of such assets to the foreign proceedings.
- (8) The insolvency law of the Abu Dhabi Global Market shall apply to the conduct of any winding-up proceedings commenced under these Regulations, whether conducted as ancillary proceedings to foreign proceedings or otherwise.

267. Inability to pay debts: unpaid creditor for \$2,000 or more

- (1) An unregistered company is deemed (for the purpose of Section 266 (*Winding-up of unregistered companies*)) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the unregistered company is indebted in a sum exceeding \$2,000 then due and—
 - (a) the creditor has served on the unregistered company, by leaving at its principal place of business, or by delivering to the secretary or some Director, manager or principal officer of the unregistered company, or by otherwise serving in such manner as the Court may approve or direct, a written demand containing the information specified in Section 201(3) (*The statutory demand*) requiring the unregistered company to pay the sum due; and
 - (b) the unregistered company has for three (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 of the time being specified in subsection (1) is subject to increase or reduction by these Regulations; 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.

268. Inability to pay debts: other cases

- (1) An unregistered company is deemed (for purposes of Section 266 (*Winding-up of unregistered companies*)) unable to pay its debts—
 - (a) if execution or other process issued on a judgment, decree or order obtained in any Court in favour of a creditor against the unregistered company or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the unregistered company, is returned unsatisfied; or
 - (b) if it is otherwise proved to the satisfaction of the Court that the unregistered 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 non-Abu Dhabi Global Market Company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

269. Company incorporated outside the Abu Dhabi Global Market may be wound up though dissolved

Where a company incorporated outside the Abu Dhabi Global Market which has been carrying on business in the Abu Dhabi Global Market ceases to carry on business in the Abu Dhabi Global Market, it may be wound up as an unregistered company under this Part 6 (*Cross-border Insolvency*), 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.

270. Outstanding property of a defunct unregistered company

- (1) This Section applies where, after the dissolution of an unregistered company, outstanding property of the unregistered company remains in the Abu Dhabi Global Market.
- (2) All property and rights of the unregistered company vests in the Abu Dhabi Global Market in accordance with Section 296 (*Property of dissolved Company*).

Chapter 2 - Recognition of foreign insolvency proceedings

271. UNCITRAL Model Law to have force of law

- (1) The UNCITRAL Model Law shall have the force of law in the Abu Dhabi Global Market in the form set out in Schedule 10 (*Application of UNCITRAL Model Law*) (which contains the UNCITRAL Model Law with certain modifications to adapt it for application in the Abu Dhabi Global Market).
- (2) Without prejudice to any practice of the Court as to the matters which may be considered apart from this subsection, the following documents may be considered in ascertaining the meaning or effect of any provision of the UNCITRAL Model Law as set out in Schedule 10 (*Application of UNCITRAL Model Law*)—
 - (a) the UNCITRAL Model Law;
 - (b) any documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the UNCITRAL Model Law; and
 - (c) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442) prepared at the request of the United Nations Commission on International Trade Law made in May 1997.

272. Modification of insolvency law of the Abu Dhabi Global Market

- (1) These Regulations shall apply with such modifications as the context requires for the purpose of giving effect to the provisions of Schedule 10 (*Application of UNCITRAL Model Law*).
- (2) In the case of any conflict between any provision of these Regulations and Schedule 10 (*Application of UNCITRAL Model Law*), the latter shall prevail.

273. Part 9 to be disapplied

Nothing in Part 9 (*Insolvency Practitioners*) applies to anything done by a foreign representative—

- (a) under or by virtue of these Regulations; or
- (b) in relation to relief granted or cooperation provided under these Regulations.

274. Overriding provisions

The Court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of Schedule 10 (*Application of UNCITRAL Model Law*) if and to the extent that such relief or modified relief or cooperation or coordination would—

- (a) be prohibited under or by virtue of—
 - (i) the Financial Services and Markets Regulations 2015 or the rules of any Recognised Body; or
 - (ii) the provisions of Part 7 (*Financial Markets and Netting*);in the case of a proceeding under these Regulations; or
- (b) interfere with or be inconsistent with any rights of a collateral-taker under Part 7 (*Financial Markets and Netting*) which could be exercised in the case of such a proceeding.

PART 7 : FINANCIAL MARKETS AND NETTING

Chapter 1 - Qualified Financial Contract

275. Enforceability of a Qualified Financial Contract

A qualified financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of the laws of the Abu Dhabi Global Market relating to games, gaming, gambling, wagering or lotteries.

Chapter 2 - Netting and Collateral

276. Netting Provisions to take effect in accordance with their terms

- (1) The provisions of a netting agreement will be enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party (including a guarantor or other person that is insolvent) and will not be stayed, avoided or otherwise limited by—
 - (a) the appointment of, or any application for the appointment of, or notice relating to the appointment of, an Office-holder or any action of an Office-holder;
 - (b) any other provision of law, excluding sections 60 to 62 of the Bank Recovery and Resolution Regulations 2018, relating to administration, liquidation, bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other Insolvency Proceedings an insolvent party may be subject to; or
 - (c) any other provision of law that may be applicable to an insolvent party, subject to the conditions contained in the applicable netting agreement.
- (2) After commencement of Insolvency Proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.
- (3) After commencement of Insolvency Proceedings in relation to a party, the only right, if any, of either party to receive payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.
- (4) Any powers of an Office-holder to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation, acceleration and/or conversion of all payment or delivery obligations or entitlements, and all obligations or entitlements relating to the making of payments or deliveries under one or more qualified financial contracts or other contracts or transactions entered into under pursuant to a netting agreement or to which a netting agreement shall apply, and will apply, if at all, only to the net amount or net entitlement due in respect of all such qualified financial contracts or other contracts or transactions in accordance with the terms of such netting agreement.
- (5) The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values, replacement values or other relevant values calculated in respect of accelerated and/or terminated

payment or delivery obligations or entitlements or accelerated and/or terminated obligations or entitlements relating to the making of payments or deliveries in either case, under one or more qualified financial contracts or other contracts or transactions entered into thereunder or to which such netting agreement applies (including a payment or delivery in respect of a contract or transaction required to be entered into under or pursuant to such provisions) will not be affected by any applicable insolvency laws, excluding sections 60 and 62 of the Bank Recovery and Resolution Regulations 2018, limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.

277. Voidable transactions

An Office-holder of an insolvent party may not avoid or render ineffective—

- (a) any payment, delivery, transfer, substitution or exchange of cash, collateral or any other interests or property under or in connection with a netting agreement or a collateral arrangement from the insolvent party to the other party;
- (b) any obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement or a collateral arrangement or to which a netting agreement applies to make any payment, transfer, delivery, substitution or exchange of cash, collateral or any other interests or property; or
- (c) any transaction entered into by the insolvent party in accordance with the terms of such netting agreement in order to give effect to the netting provided for by such netting agreement;

on the grounds of it constituting a preference for the purposes of Section 258 (*Preferences*) or a transaction at an undervalue for the purposes of Section 257 (*Transactions at an undervalue*) by the insolvent party to or for the benefit of the non-insolvent party, unless there is clear and convincing evidence that the other party made such transfer, payment, delivery, substitution or exchange or incurred such obligation or entered into such transaction with actual intent to hinder, delay, or defraud any person to which the insolvent party was indebted or became indebted, on or after the date such transfer, payment, delivery, substitution or exchange was made or such obligation was incurred or such transaction was entered into.

278. Pre-emption and confirmation of disapplication of certain provisions of these Regulations to netting agreements

- (1) Subject to sections 60 to 62 of the Bank Recovery and Resolution Regulations 2018, no stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a Court, administrative agency, Office-holder or otherwise, shall limit or delay application of otherwise enforceable netting agreements or collateral arrangements and transactions entered into thereunder or pursuant thereto or to which an otherwise enforceable netting agreement or collateral arrangement applies.
- (2) Without prejudice to the foregoing provisions of this Chapter 2 (*Netting and Collateral*)—
 - (a) in relation to winding-up proceedings of an insolvent party to a netting agreement or a collateral arrangement, Section 209(2) (*Consequences of winding-up order*) shall not apply (if it would otherwise do so)—
 - (i) to any property or security subject to a disposition or transfer or created or otherwise arising under a netting agreement or a collateral arrangement; or

- (ii) to prevent a netting under a netting agreement or a collateral arrangement taking effect in accordance with its terms;
- (b) Section 196 (*Avoidance of share transfers after winding-up resolution*) shall not apply (if it would otherwise do so) to any transfer of shares under a netting agreement or a collateral arrangement;
- (c) Section 218 (*Power to disclaim onerous property*) shall not apply to a netting agreement or a collateral arrangement where an insolvent party to such netting agreement or such collateral arrangement is subject to winding-up proceedings;
- (d) Paragraphs 24 (*Administration: mutual dealings and set-off*) and 25 (*Winding-up: mutual dealings and set-off*) of Schedule 5 (*Proofs and Distribution*) shall not apply (if they would otherwise do so) to prevent a netting under a netting agreement taking effect in accordance with its terms;
- (e) the following Sections shall not apply to any security created or otherwise arising under a collateral arrangement—
 - (i) Section 45(2) (*Moratorium on other legal process*) including that provision as applied by Section 46 (*Interim moratorium*);
 - (ii) Section 79(2) (*Court may limit rights*);
 - (iii) Section 96(2) (*Distribution*);
 - (iv) Sections 99 (*Charged property: floating charge*) and 100 (*Charged property*);
 - (v) Section 143(3) and (4) (*Vacation of office: charges and liabilities*); and
 - (vi) Section 226(1) (*General rule as to priority of expenses*);
- (f) Section 43(2) (*Dismissal of administrative or other receiver*) shall not apply to a receiver appointed under a charge created or otherwise arising under a collateral arrangement.
- (g) Section 692 (*Priorities where debentures secured by floating charge*) of the Companies Regulations 2020 shall not apply to debentures creating a collateral arrangement by way of floating charge.
- (h)
 - (i) Where any of the events specified in sub-paragraph (ii) occur on the day of, but after the moment of the making of a winding-up order by the Court or the appointment of an administrator, those arrangements, obligations or other events shall be legally enforceable and binding on third parties if the collateral-taker can show that he was not aware, nor should have been aware of such making of the winding-up order or the appointment of an administrator.
 - (ii) The events referred to in sub-paragraph (i) are—
 - (a) a collateral arrangement coming into existence;
 - (b) a relevant obligation secured by a collateral arrangement coming into existence; or
 - (c) the delivery, transfer, holding, registering or other designation of collateral so as to be in the possession or under the control of the collateral-taker.

Chapter 3 - Collateral Arrangements

279. No recharacterisation

A title transfer collateral arrangement which is not expressed to be by way of security shall not be recharacterised as security over collateral and shall take effect in accordance with its terms.

280. Realisation and liquidation of collateral

Unless otherwise agreed by the parties, the realisation, appropriation and/or liquidation of collateral under a collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any party, person or entity, provided that this Section is without prejudice to any applicable provision of law requiring that the realization, appropriation and/or liquidation of collateral is conducted in a commercially reasonable manner.

281. No formal act required

- (1) Other than as set out herein, no formal act shall be necessary for the attachment, perfection or enforcement of a collateral arrangement which is by way of security over collateral to the extent it would otherwise be required under Abu Dhabi Global Market legislation.
- (2) Without prejudice to the generality of subsection (1), the following provisions shall not apply (if they would otherwise do so) in relation to a collateral arrangement or any charge created or otherwise arising under a collateral arrangement—
 - (a) Section 784 (Charges created by a Company) and section 791 (Consequence of failure to deliver charges) of the Companies Regulations 2020;
 - (b) Section 4 (No action on a third party's promise unless in writing and signed) of the Statute of Frauds 1677; and
 - (c) Section 152 (*Legal assignments of things in action*) of the Real Property Regulations 2015.

282. Right of use of a collateral-taker in collateral and obligation to return equivalent assets

- (1) If a collateral arrangement which is by way of security over collateral provides for the collateral-taker to use and dispose of any collateral provided under the collateral arrangement, as if it were the owner of it, the collateral-taker may do so in accordance with the terms of the arrangement.
- (2) The exercise by a collateral-taker of a right of use as described in subsection (1) shall not render invalid or unenforceable any right of the collateral-taker under such a collateral arrangement.
- (3) If a collateral-taker exercises such a right of use, it is obliged to replace the original collateral by transferring equivalent collateral on or before the due date for the performance of the relevant obligations covered by the arrangement or, if the arrangement so provides, it may set off the value of the equivalent collateral against or apply it in discharge of the relevant obligations in accordance with the terms of the arrangement.
- (4) The equivalent collateral which is transferred in discharge of an obligation as described in subsection (3) shall be subject to the same terms of the collateral arrangement as the original collateral was subject to and shall be treated as having been provided

under the collateral arrangement at the same time as the original collateral was first provided.

- (5) If a collateral-taker has an outstanding obligation to replace the original collateral with equivalent collateral, that obligation may be the subject of a netting under the applicable netting agreement or collateral arrangement in accordance with its terms.

283. Appropriation

- (1) Without prejudice to the foregoing Sections of this Part 7 (*Financial Markets and Netting*), if the collateral arrangement which is by way of security over collateral provides for realisation by appropriation of the collateral the subject of such arrangement, then the collateral-taker may so realise the collateral in accordance with the terms of the applicable collateral arrangement without any order for foreclosure from the Court, as the collateral-taker's own property. The collateral-taker shall on such realisations, set its value against, or applying its value in or towards the discharge of, the relevant obligations.
- (2) Upon the exercise by the collateral-taker of the power to appropriate the collateral, the equity of redemption of the collateral-provider shall be extinguished and all legal and beneficial interest of the collateral-provider in the collateral shall vest in the collateral-taker.
- (3) Upon the exercise by a collateral-taker of the power to appropriate the collateral in accordance with subsection (1), the collateral-taker must value the collateral in accordance with the terms of the arrangement and in any event in a commercially reasonable manner.
- (4) Where a collateral-taker exercises such a power and the value of the collateral appropriated differs from the amount of the relevant obligations, then as the case may be, either—
 - (a) the collateral-taker must account to the collateral-provider for the amount by which the value of the collateral exceeds the relevant obligations; or
 - (b) the collateral-provider will remain liable to the collateral-taker for any amount by which the value of the collateral is less than the relevant obligations.

Chapter 4 - Interpretation

284. Netting agreement containing other provisions

For the purposes of this Part 7 (*Financial Markets and Netting*), a netting agreement shall be deemed to be a netting agreement notwithstanding the fact that such netting agreement may contain provisions relating to agreements, contracts or transactions that are not qualified financial contracts, provided, however, that, for the purposes of this Part 7 (*Financial Markets and Netting*), such netting agreement shall be deemed to be a netting agreement only with respect to those agreements, contracts or transactions that fall within the definition of "qualified financial contract".

285. Control

A collateral-taker who has taken collateral by way of security shall be treated as having control of collateral for the purposes of these Regulations notwithstanding:

- (1) its exercise of a right of use as described in Section 282(1) (Right of use of collateral-taker in collateral and obligation to return equivalent assets);

- (2) any right of the collateral-provider to substitute collateral of the same or greater value, withdraw excess collateral or collect the proceeds of, or otherwise service, a credit claim until further notice.

For the purposes of these Regulations “possession” of collateral in the form of cash or securities includes the case where collateral has been credited to an account in the name of the collateral-taker or a person acting on his behalf (whether or not the collateral-taker, or person acting on his behalf, has credited the collateral to an account in the name of the collateral-provider on his, or that person’s, books) provided that any rights to the collateral-provider may have in relation to that collateral are limited to the right to substitute collateral of the same or greater value or to withdraw excess collateral.

286. Single agreement

For the purposes of this Part 7 (*Financial Markets and Netting*), a netting agreement and all qualified financial contracts entered into thereunder shall constitute a single agreement.

287. Application of this Part

This Part 7 (*Financial Markets and Netting*) applies to any qualified financial contract, netting agreement or collateral arrangement (including any title transfer collateral arrangement) which is governed by the laws of the Abu Dhabi Global Market or which is entered into by a person incorporated or licensed in the Abu Dhabi Global Market or organised under a law of the Abu Dhabi Global Market, irrespective of the date on which such qualified financial contract, netting agreement or collateral arrangement was entered into.

PART 8 : CONTRAVENTIONS AND FINES

288. Contraventions and administrative notice of fine

Where—

- (a) a provision of these Regulations provides that a failure to comply with a provision constitutes a contravention and prescribes the level of the fine in relation to the contravention; and
 - (b) the Registrar considers that a person has committed such a contravention,
- the Registrar may impose on such person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding the amount of the maximum fine specified in respect of such contravention in the Fines Schedule.

PART 9 : INSOLVENCY PRACTITIONERS

289. Restrictions on service as liquidator, administrative receiver, administrator, administrator of a Deed of Company Arrangement or receiver

- (1) No person may be appointed as or serve as a receiver, an administrative receiver, an administrator, a liquidator or provisional liquidator of a Company or an administrator of a Deed of Company Arrangement under these Regulations or any other Abu Dhabi Global Market legislation unless they are registered as an insolvency practitioner pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).
- (2) The registration of an insolvency practitioner constitutes an acknowledgement by that insolvency practitioner that the insolvency practitioner will accept any appointment made by the Court as a receiver, administrative receiver, administrator, liquidator or provisional liquidator in accordance with the provisions of any rules of procedure as may be made by the Court.

290. Qualification and registration of insolvency practitioners

In these Regulations, unless expressed otherwise, a reference to an “**insolvency practitioner**” is a reference to a natural person registered as an insolvency practitioner under the Insolvency Regulations (Insolvency Practitioner) Rules 2022.

291. Compliance and removal from appointment

- (1) The insolvency practitioner must at all times comply with the Insolvency Regulations (Insolvency Practitioner Rules) 2022 and such other conditions and requirements specified in writing by the Registrar and the Court from time to time.
- (2) Failure to comply with the Insolvency Regulations (Insolvency Practitioner Rules) 2022 may result in the insolvency practitioner’s removal from any appointment under these Regulations as a receiver, an administrative receiver, an administrator, a liquidator or provisional liquidator of a Company or an administrator of a Deed of Company Arrangement.

292. Power to make rules and maintain the register

- (1) The Registrar may make such rules applying to insolvency practitioners as appear to the Registrar to be in the interest of the Abu Dhabi Global Market.
- (2) The Registrar may from time to time amend, revise, withdraw or supplement any rules so made by the Registrar as the Registrar may consider appropriate or desirable for the purposes of such rules.
- (3) The Registrar may make rules which require a register of insolvency practitioners to be kept and which may provide that different parts of the register are to be kept and maintained by different persons.
- (4) The Board may make rules which require the payment to the Registrar of such fees, in connection with applications made under this Part 9 (*Insolvency Practitioners*), as are specified in the rules. Any fee which is owed to the Registrar under any provision made by such rules may be recovered as a debt due to the Registrar. The Registrar may reject an application made under this Part 9 (*Insolvency Practitioners*) which is not accompanied by the payment to the Registrar of the relevant fee.

293. Modification or waiver of rules

- (1) The Registrar may, on the application or with the consent of a person who is subject to rules made under this Part 9 (*Insolvency Practitioners*), direct that all or any of those rules shall:
 - (a) not to apply to that person; or
 - (b) apply to that person with such modifications as may be specified in the direction.
- (2) The Registrar may not give a direction under Section 293(1) unless the Registrar is satisfied that:
 - (a) compliance by the person with the rules or such direction would be unduly burdensome or would not achieve the purpose for which the rules or direction (as applicable) were made; and
 - (b) the direction would not adversely affect the interests of the Abu Dhabi Global Market.

PART 10: DISSOLUTION

294. Dissolution and early dissolution

- (1) Subsections (2) and (3) of this Section apply, where the liquidator has sent to creditors his final account and return.
- (2) On the expiration of three (3) months from the date of dispatch of the final account and return the Company is deemed to be dissolved.
- (3) However, 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 subsection (3) is made to deliver a copy of the order to the Registrar for registration. If the person fails to do so, he commits a contravention and is liable to a fine at the relevant level set out in the Fines Schedule.
- (5) Where the realisable assets of the Company are insufficient to cover the expenses of the winding-up, and the affairs of the Company do not require any further investigation, the liquidator may at any time apply to the Registrar for the early dissolution of the Company.
- (6) Before making an application under subsection (5), the liquidator shall give not less than twenty-eight (28) days' notice of his intention to do so to the Company's creditors and contributories and to any administrative receiver.
- (7) On the expiration of three (3) months from the date of receipt of the application by the Registrar under subsection (5), the Company is dissolved.

295. Power of Court to declare dissolution of Company void

- (1) Where a Company has been dissolved under these Regulations or the Companies Regulations 2020, the Court may at any time within ten (10) years of the date of the dissolution, on an application made by a liquidator of the Company or by any other person appearing to the Court to be interested, make an order, on such terms as the Court sees fit, declaring the dissolution to have been void and the Court may by the order give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as nearly as may be as if the Company had not been dissolved.
- (2) Upon the making of an order under subsection (1), such proceedings may be taken which might have been taken if the Company had not been dissolved.

296. Property of dissolved Company

- (1) When a Company is dissolved under these Regulations or the Companies Regulations 2020, all property and rights whatsoever vested in the Company immediately before its dissolution are deemed to be vested in the Abu Dhabi Global Market in accordance with Chapter 2 (*Property of dissolved company*) of Part 29 (*Dissolution and restoration to the register*) of the Companies Regulations 2020.
- (2) Subsection (1) is subject to any order of the Court under Section 295 (*Power of Court to declare dissolution of Company void*) or otherwise.

PART 11 : GENERAL

Chapter 1 - Interpretation and Time

297. Rules of interpretation

- (1) In these Regulations, unless a contrary intention appears, a reference to—
 - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a Company, unregistered company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Regulations, include publishing or causing to be published in printed or electronic form; and
 - (d) any reference to “**dollars**” or “**\$**” is a reference to United States Dollars.
- (2) In these Regulations, unless a contrary intention appears, the rules of interpretation and construction of the Interpretation Regulations 2015 shall apply.
- (3) A reference to “**prescribed form**”, “**prescribed manner**”, “**prescribed circumstances**”, “**prescribed condition**”, “**prescribed information**”, “**prescribed persons**”, “**prescribed matters**”, “**prescribed period**”, “**prescribed provisions**” or to be as “**prescribed**” without further reference is a reference to such form, manner, circumstances, condition, information, persons, matters, period, provisions or otherwise as to be determined by:
 - (a) these Regulations (including the Schedules);
 - (b) any rules or forms made or published by the Registrar; or
 - (c) any rules, practice directions or forms made or published by the Court.
- (4) The Registrar may by order amend a provision of these Regulations which—
 - (a) requires anything to be done within a specified period of time;
 - (b) prevents anything from being done after a specified time; or
 - (c) requires a specified minimum period of notice to be given.

298. Defined terms

In these Regulations, unless otherwise defined in these Regulations or the context indicates otherwise, the defined terms listed below shall have the following meanings—

“**ADGM Court Procedure Rules**” means any rules, procedures, practice or guidance relating to the Court that is issued by the Chief Justice of the Court from time to time.

“**administration application**” has the meaning given in Section 8(1) (*Administration application*).

“**administrative receiver**” has the meaning given by Section 152 (Appointment and powers of receivers and administrative receivers).

“**administrator**” of a Company and “**administrator**” of a Deed of Company Arrangement have the respective meanings given by Section 1(1) (*Administration*).

and, where the context requires, includes a reference to a former administrator and, unless the context otherwise requires, references to an “**administrator**” without further designation are to both kinds of administrator.

“**Appointed Person**” means in relation to a creditors’ voluntary winding-up, an authorised person in relation to the Company or debtor, who is appointed in writing by an Office-holder.

“**Articles**” has the meaning given in the Companies Regulations 2020.

“**Associate**” has the meaning given to it by section 300 (*Meaning of “Associate”*) of this Part 11 (*General*).

“**attendance**” at a meeting is to be interpreted in accordance with paragraph 2 (*Attendance at meetings and proxies*) of Part 1 (*Meetings and time limits*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*).

“**authenticate**” or “**authenticated**” means to authenticate in accordance with paragraph 6 (*Authentication*) of Part 2 (*Form and content of documents*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*).

“**Authorised Person**” has the meaning given to that term in the Financial Services and Markets Regulations 2015.

“**blank proxy**” has the meaning given in paragraph 37 (*Blank proxies*) of Part 11 (*Proxies and corporate representation*) of Schedule 6 (*Meetings and Correspondence*).

“**body corporate**” has the meaning given to that term in the Companies Regulations 2020.

“**books and papers**” includes accounts, deeds, writing and documents.

“**business day**” means every day except Saturday, Sunday and public holidays in the United Arab Emirates.

“**capital market arrangement**” has the meaning given to it by section 301 (*Meaning of “capital market arrangement”*) of this Part 11 (*General*).

“**capital market investment**” has the meaning given to it by section 302 (*Meaning of “capital market investment”*) of this Part 11 (*General*).

“**cash**” means money in any currency, credited to an account, or a similar claim for repayment of money such as a money market deposit and sums due or payable to, or received between the parties in connection with the operation of a collateral arrangement or a netting agreement.

“**collateral**” means any of the following—

- (a) cash in any currency;
- (b) securities of any kind, including (without limitation) debt and equity securities and sukuk, units of a collective investment fund, money market instruments, claims relating to or rights in or in respect of any of the financial instruments included in this definition and any rights, privileges or benefits attached to or arising from any such financial instruments;
- (c) guarantees, letters of credit and obligations to reimburse;

- (d) pecuniary claims which arise out of an agreement whereby an Authorised Person grants credit in the form of a loan (“**credit claims**”); and
- (e) any asset commonly used as collateral in the Abu Dhabi Global Market.

“**collateral arrangement**” means any margin, collateral or security arrangement or other credit enhancement or other agreement or arrangement, evidenced in writing, the purpose of which is to secure, cover or provide credit support in respect of, the relevant obligations owed to the collateral-taker and where the collateral-provider and the collateral-taker are both non-natural persons, where—

- (a) security in collateral, where the collateral is delivered, transferred, held registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf is created or arises to secure the relevant obligations;
- (b) there is a title transfer collateral arrangement; or
- (c) there is any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial contracts, in respect of one or more of those qualified financial contracts.

“**Commencement of the winding-up**” is deemed to occur—

- (a) in the case of a voluntary winding-up, at the time of the passing of the resolution for voluntary winding-up;
- (b) in the case of a winding-up order made by virtue of Section 18(1)(e) (*Powers of Court*), on the making of the order; or
- (c) in any other case, at the time of the presentation of the petition for winding-up.

“**Commercial Licensing Regulations 2015**” means the Commercial Licensing Regulations 2015, issued by the Board.

“**Companies Regulations 2020**” means the Companies Regulations 2020, issued by the Board.

“**Company**” has the meaning given in Section 1 (*Companies*) of the Companies Regulations 2020.

“**Connected Person**” means a person is connected with a Company if—

- (a) he is a Director, officer or shadow director of the Company or he is an Associate of such a Director, officer or shadow director;
- (b) he is an Associate of the Company;
- (c) he is an employee of the Company; or
- (d) he is a trustee of a trust and the Company has an interest as beneficiary in the trust property or vice versa.

“**contributory**” means every person liable to contribute to the assets of a Company in the event of its being wound up.

“**convener**” means in respect of any meeting, the person who summons the meeting.

“**corporation**” has the meaning given to that term in the Companies Regulations 2020.

“**correspondence**” includes correspondence by telephonic or other electronic means.

“Court” means the Abu Dhabi Global Market Courts unless the context otherwise requires.

“creditors’ voluntary winding-up” means a voluntary winding-up other than a members’ voluntary winding-up.

“debt” means —

- (a) in relation to the winding-up of a Company, any of the following—
 - (i) any debt or liability to which the Company is subject—
 - (1) in the case of a winding-up which was not immediately preceded by an administration on the date on which the Company went into liquidation;
 - (2) in the case of a winding-up which was immediately preceded by an administration, at the date on which the Company entered administration;
 - (ii) any debt or liability to which the Company may become subject after that date by reason of any obligation incurred before that date; and
 - (iii) any interest provable as mentioned in paragraph 28 (*Interest*) of Part 3 (*Creditors’ claims*) of Schedule 5 (*Proofs and Distribution*); and
- (b) in relation to the administration of a Company, any of the following—
 - (i) any debt or liability to which the Company is subject on the date on which the Company went into administration;
 - (ii) any debt or liability to which the Company may become subject after that date by reason of any obligation incurred before that date; and
 - (iii) any interest provable as mentioned in paragraph 28 (*Interest*) of Part 3 (*Creditors’ claims*) of Schedule 5 (*Proofs and Distribution*); and
- (c) for the purposes of a reference in any provision of these Regulations about winding-up or administration to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

“Deed of Company Arrangement” means a deed of company arrangement between a Company, all or some of its creditors and the administrator of the deed which complies with the requirements of Chapter 8 (*Deed of Company Arrangement*) of Part 1 (*Administration*) of these Regulations.

“deliver” and **“delivery”** are to be interpreted in accordance with Part 8 (*Delivery of documents and opting out*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*) except in respect of the Registrar where “deliver” and “delivery” are to be interpreted in accordance with the Regulations.

“Director” has the meaning given in the Companies Regulations 2020 and includes any person occupying the position of Director, by whatever name called.

“document” includes a written notice or statement or anything else in writing capable of being delivered to a recipient.

“eCourts Platform” means the Abu Dhabi Global Markets Courts electronic filing and case management systems.

“electronic means” in relation to delivery or other correspondence includes fax and “electronic address” includes a fax number.

“equivalent collateral” means—

- (a) in relation to securities, securities of the same issuer or debtor, forming part of the same issue or class and (except in the case of shares of a Company) the same nominal amounts and the same currency and description, or such other assets as may be permitted by the relevant collateral arrangement; and
- (b) in relation to cash, a payment of the same amount and in the same currency, and includes the original collateral provided under the arrangement.

“file with the Court” means submit for filing in the Court in accordance with the relevant practice direction.

“file with the Registrar” means deliver to the Registrar for filing.

“financed project” has the meaning given to it by section 305 (*Meaning of “financed project”*) of this Part 11 (*General*).

“Financial Services and Markets Regulations 2015” means the Financial Services and Markets Regulations 2015, issued by the Board.

“Fines Schedule” means Schedule 9 (*Contraventions*), as such Schedule may be amended, replaced or supplemented from time to time.

“floating charge” means a charge which is a floating charge on its creation.

“foreign main proceeding” means a foreign proceeding taking place in a jurisdiction other than the Abu Dhabi Global Market where the debtor has the centre of its main interests.

“foreign proceeding” has the meaning given in Schedule 10 (*Application of UNCITRAL Model Law*).

“foreign representative” has the meaning given in Schedule 10 (*Application of UNCITRAL Model Law*).

“general meeting” means a meeting of members of a Company.

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

“holder of a qualifying charge” in respect of a Company’s property has the meaning given in Section 21 (*Power to appoint*).

“in administration” has the meaning given by Section 1(2)(a) (*Administration*).

“insolvency law of the Abu Dhabi Global Market” means these Regulations as extended or applied by or under any other enactment, regulations or rules (excluding these Regulations).

“insolvency practitioner” has the meaning given under Section 290 (*Qualification and registration of insolvency practitioners*).

“Insolvency Proceedings” means, as the context requires, any of the following procedures or proceedings—

- (a) under these Regulations—
 - (i) winding-up;
 - (ii) provisional liquidation;
 - (iii) administrative receivership;
 - (iv) receivership;
 - (v) administration or, in the case of Part 7 (*Financial Markets and Netting*), the making of an interim order on an administration application or out of Court administration interim period; and
 - (vi) a Deed of Company Arrangement being in force; and
- (b) for the purposes of Part 7 (*Financial Markets and Netting*) of the Regulations only, any of the procedures or proceedings described in paragraph (a) and any other procedure or proceeding under any provision of law relating to liquidation, reorganisation, bankruptcy, composition with creditors, receivership or any other similar procedures or proceedings.

“insolvent estate” means the Company’s property.

“insolvent party” is the party in relation to which an Insolvency Proceeding under the laws of the Abu Dhabi Global Market has been instituted.

“Interpretation Regulations 2015” means the Interpretation Regulations 2015, as enacted by the Board.

“last date for proving” has the meaning given in paragraph 32 (*Content of notice*) of Part 4 (*Distributions to creditors*) of Schedule 5 (*Proofs and Distribution*).

“legislation” includes regulations or rules made under legislation.

“level” when used to describe the quantum of any fine imposed under these Regulations is a reference to the fine levels set out in Schedule 9 (*Contraventions*) by reference to any standard fines schedule or scale set out in an enactment or in subordinate legislation.

“liability” has the meaning given in Section 299 (*Meaning of “liability”, “into liquidation” and “into insolvent liquidation” and “in administration”, “enters administration” and “enters insolvent administration”*) of this Part 11 (*General*).

“Limited Liability Partnership” means a limited liability partnership, as regulated by rules and regulations adopted by the Board.

“Limited Liability Partnership Agreement” means the incorporation document as defined in the Limited Liability Partnerships Regulations or any other agreement among the members of a Limited Liability Partnership.

“Limited Liability Partnerships Regulations” means any rules and regulations issued from time to time by the Board regulating limited liability partnerships.

“Liquidation Committee” means a creditors’ committee appointed in accordance with Section 230 (*Liquidation committee*).

“liquidator” includes, where the context allows, a liquidator appointed provisionally.

“market value” means the amount which would be realised on a sale of property in the open market by a willing vendor.

“member”, in respect of a Company, has the meaning given in the Companies Regulations 2020.

“members’ voluntary winding-up” means a winding-up in which a Director’s declaration has been made in accordance with Section 175 (*Declaration of solvency*).

“netting” means the occurrence of any or all of the following—

- (a) the termination, liquidation or acceleration of any payment or delivery obligations or entitlements or obligations or entitlements to make, receive or require payments or deliveries, under one or more qualified financial contracts or other transactions entered into under a netting agreement or to which a netting agreement applies;
- (b) the calculation or estimation of a close-out value, market value, liquidation value, replacement value or other relevant value (whether at the time of or following the relevant termination, liquidation and/or acceleration) in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated or accelerated under sub-paragraph (a) of this definition;
- (c) the conversion of any values calculated or estimated under sub-paragraph (b) of this definition into a single currency;
- (d) the determination of the net balance of the values calculated under paragraph (b) of this definition, as converted under sub-paragraph (c) of this definition, whether by operation of set off or otherwise; and
- (e) entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for an asset or the provision for the payment of damages related to any non-performance of any such transaction.

“netting agreement” means (a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts or other contracts or transactions entered into under the agreement, or to which the agreement applies, by the parties to the agreement (a **“master netting agreement”**), (b) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a **“master-master netting agreement”**), (c) any other agreement between two or more parties which incorporates netting and (d) collateral arrangement related to or forming part of one or more of the foregoing.

“non-cellular assets” has the meaning given in the Companies Regulations 2020.

“non-Abu Dhabi Global Market Company” means a company incorporated or formed outside the Abu Dhabi Global Market, whether under the federal or local laws of the United Arab Emirates, or the law of any other country or territory.

“non-insolvent party” is the party other than the insolvent party.

“Office-holder” means a receiver, administrative receiver, administrator of a Company, administrator of a Deed of Company Arrangement, a liquidator or a provisional liquidator, as the case may be, and who is registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*).

“officer” means, in relation to a Company—

- (a) a Director, manager or secretary; or
- (b) an Office-holder appointed to the Company or its property.

“official exchange rate” is the foreign exchange rate prescribed in paragraph 26 (*Debt in foreign currency*) of Part 3 (*Creditors’ claims*) of Schedule 5 (*Proofs and Distribution*).

“official interest rate” means the rate of interest specified in the provisions of the ADGM Court Procedure Rules relating to general rules about costs.

“opted-out creditor” means a creditor of a Company who in accordance with the Regulations has elected (or is deemed to have elected) to be (and not ceased to be) an opted-out creditor in relation to an Office-holder of that Company.

“party” means for the purposes of Part 7 (*Financial Markets and Netting*) of these Regulations a person constituting one of the parties to a netting agreement.

“permission” of the Court is to be read as referring to “leave of the Court” in these Regulations.

“petitioner”, when referred to in the context of a winding-up, includes any person who has been substituted as such, or has been given carriage of the petition.

“Preferential Debts” means the debts referred to in Section 227 (*Preferential Debts*).

“Privileged Communication” means a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but does not include a general duty of confidentiality.

“project company” has the meaning given to it by section 303 (*Meaning of “project company”*) of this Part 11 (*General*).

“property” has the meaning given in Section 215(2) (*Property of the Company*).

“proof” and **“proving”** has the meaning given in paragraph 4 (*Proving a debt*) of Part 3 (*Creditors’ claims*) of Schedule 5 (*Proofs and Distribution*).

“Protected Cell Company” has the meaning given in the Companies Regulations 2020.

“proxy” has the meaning given in paragraph 2 (*Attendance at meetings and proxies*) of Part 1 (*Meeting and time limits*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*).

“published in the Abu Dhabi Global Market” means publication—

- (a) in an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market; and
- (b) on the website of the Company to which such notice relates.

“qualified financial contract” means any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed or title to commodities or assets is to be transferred for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency or pursuant to which obligations to make

payments or deliveries, or to transfer title to commodities or assets, in either case, for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency are to be entered into or incurred. Qualified financial contracts include (without limitation) —

- (a) a currency, cross-currency, interest rate or profit rate swap;
- (b) a basis swap;
- (c) a spot, future, forward or other foreign exchange transaction;
- (d) a cap, collar or floor transaction;
- (e) a commodity swap;
- (f) a forward rate agreement;
- (g) a currency, interest rate or profit rate future;
- (h) a currency, interest rate or profit rate option;
- (i) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option or total return swap;
- (j) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option;
- (k) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
- (l) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
- (m) a weather derivative, such as a weather swap or weather option;
- (n) a bandwidth derivative;
- (o) a freight derivative;
- (p) an emissions derivative, such as an emissions allowance or emissions reduction transaction;
- (q) an economic statistics derivative, such as an inflation derivative;
- (r) a property index derivative;
- (s) a spot, future, forward or other securities or commodities transaction;
- (t) a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities;
- (u) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement;
- (v) a collateral arrangement;

- (w) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (x) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) to (w) with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
- (y) any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (x) or (z) or (aa) below;
- (z) any Sharia'a compliant contract or undertaking (including a murabaha, musawama or wa'ad) which individually or together with any other such contract or undertaking has or is entered into with a view to having an economic effect similar to any instrument of a kind described in any of paragraphs (a) to (y) above or paragraph (aa) below; and
- (aa) any agreement, contract or transaction designated as such by the Board by published notice, such designation being revocable by further published notice.

"Real Property Regulations 2015" means the Real Property Regulations 2015, issued by the Board.

"receiver" has the meaning given in Section 152(1) (*Appointment and powers of receivers and administrative receivers*) and includes, where the context allows, an administrative receiver but does not include any Court-appointed receiver appointed under the ADGM Court Procedure Rules.

"Recognised Body" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"registered company auditor" means a person who is appointed as an auditor in accordance with Part 35 (*Auditors*) of the Companies Regulations 2020.

"Registrar" means the Abu Dhabi Global Market's Registration Bureau established by Article 10 of the ADGM Founding Law and governed by Article 11 of that law.

"these Regulations" means the Insolvency Regulations 2022, issued by the Board.

"relevant obligations" means the obligations which are incurred under, secured or otherwise covered by a netting agreement or collateral arrangement and such obligations may consist of or include—

- (a) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement);
- (b) obligations owed to the collateral-taker, by a person other than the collateral-provider; or
- (c) obligations of a specified class or kind arising from time to time.

"residential address" means the current residential address of a person or, if that is not known, the last known residential address.

“retention of title agreement” means 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 in respect of the goods or any property representing the goods.

“Ruler” means the ruler of the Emirate of Abu Dhabi.

“seal” or **“sealed”** shall mean the seal provided for, or a document having been sealed in accordance with the requirements of, the ADGM Court Procedure Rules.

“secured creditor” of a Company means a creditor of a Company who holds security in respect of his debt over property of the Company.

“security” means any mortgage, charge (including floating charge), pledge, lien or other security.

“service” means both for Court documents and other documents, service in accordance with Part 4 of the ADGM Court Procedure Rules or by any method as the Court may by order approve or direct.

“shadow director”, in relation to a Company, means a person in accordance with whose directions or instructions the Directors of the Company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the Directors act on advice given by him in a professional capacity).

“Special Resolution” has the meaning given in the Companies Regulations 2020.

“Schedule” means a schedule to these Regulations.

“standard contents” means—

- (a) for a notice to be published in the Abu Dhabi Global Market, the standard contents set out in Part 3 (*Standard contents of notices to be published in the Abu Dhabi Global Market*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*);
- (b) for notices to be advertised other than by way of being published in the Abu Dhabi Global Market, the standard contents set out in Part 4 (*Standard contents of notices advertised in such manner as the Office-holder thinks fit*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*);
- (c) for a notice to be delivered to the Registrar, the standard contents set out in Part 5 (*Standard contents of notices to be delivered to the Registrar etc.*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*);
- (d) for a notice to be delivered to other persons, the standard contents set out in Part 6 (*Standard contents of notices to be delivered to other persons etc.*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*);
- (e) for applications to the Court the standard contents set out in Part 7 (*Applications to the Court*) of Schedule 1 (*Meetings, Time Limits, Notices and Documents*).

“Statement of Affairs” means a statement of a Company’s affairs prepared in accordance with these Regulations in relation to an administration, administrative receivership or a winding-up as the context requires, and containing the particulars as prescribed by these Regulations or otherwise by the Registrar.

“statement of concurrence” means a statement made by a relevant person in the prescribed form stating that he concurs in the statement of affairs as detailed in Section 52 (*Verification and filing*).

“statement of proposals” means a statement made by an administrator under Section 56 (*Administrator’s proposals*) setting out proposals for achieving the purpose of administration.

“statement of truth” means a statement of truth made in accordance with the ADGM Court Procedure Rules.

“statutory demand” means a demand served by a creditor on the Company, as further described in Section 201 (*The statutory demand*).

“step-in rights” has the meaning given to it by section 304 (*Meaning of “step-in rights”*) of Part 11 (*General*).

“subsidiary” has the meaning given in the Companies Regulations 2020.

“the purpose of administration” means an objective specified in Section 2(1) (*Purpose of administration*).

“title transfer collateral arrangement” means an agreement or arrangement, evidenced in writing, where the collateral-provider and the collateral-taker are both non-natural persons the purpose of which is to secure or otherwise cover the relevant obligations owed to the collateral-taker based on the transfer of title to collateral to a collateral-taker on terms that when the relevant obligations are discharged, the collateral-taker must transfer title to equivalent collateral to the collateral-provider, including (without limitation) a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or an irregular pledge.

“unable to pay its debts” has the meaning given by Section 200 (*Definition of inability to pay debts*).

“UNCITRAL Model Law” means the Model Law on cross-border insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997.

“unregistered company” has the meaning given in Section 265 (*Application of this Part to “unregistered company”*).

References to the **“venue”** for any proceeding or attendance before the Court or for a meeting are to—

- (a) the time, date and place for the proceeding, attendance or meeting; or
- (b) the time and date for a meeting which is held in accordance with paragraph 18 (*Remote attendance at meetings*) of Part 6 (*Constitution of meetings*) of Schedule 6 (*Meetings and Correspondence*) or paragraph 19 (*Remote attendance at meetings of creditors’ committees*) of Part 4 (*Meetings of committee*) of Schedule 7 (*Creditors’ Committees*) without any place being specified for it.

“voluntary winding-up” means a members’ voluntary winding-up and a creditor’s voluntary winding-up.

“winding-up by the Court” means a winding-up under Sections 199 (*Circumstances in which a Company may be wound up by the Court*), 203 (*Petition for winding-up by*

the Financial Services Regulator) and 266 (Winding-up of unregistered Companies) of these Regulations.

“winding-up proceedings” means—

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

“witness statement” means a witness statement verified by a statement of truth in accordance with the ADGM Court Procedure Rules.

299. Meaning of “liability”, “into liquidation” and “into insolvent liquidation” and “in administration”, “enters administration” and “enters insolvent administration”

- (1) In any provision of these Regulations about winding-up or administration, except in so far as the context otherwise requires, **“liability”** means a liability to pay money or money’s worth, including, without limitation, any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.
- (2) A Company goes **“into liquidation”** if it passes a resolution for voluntary winding-up or an order for its winding-up is made by the Court at a time when it has not already gone into liquidation by passing such a resolution.
- (3) A Company goes **“into insolvent liquidation”** if at the time the Company goes into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding-up.
- (4) References to a Company being **“in administration”** or that a Company **“enters administration”** shall be construed in accordance with Section 1(2) (*Administration*).
- (5) A Company enters **“insolvent administration”** if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.

300. Meaning of “Associate”

- (1) For the purposes of these Regulations an **“Associate”** of another person is to be determined in accordance with this paragraph and any provision that a person is an Associate of another person is to be taken to mean that they are Associates of each other.
- (2) A person is an Associate of an individual if that person is—
 - (a) the individual’s spouse (including former spouse);
 - (b) a relative of the individual or the individual’s spouse (including former spouse); or
 - (c) the spouse (including former spouse) of a relative of the individual or the individual’s spouse (including former spouse).
- (3) A person is an Associate of any person whom he employs or by whom he is employed.
- (4) A person in his capacity as trustee of a trust other than a pension scheme or an employees’ share scheme is an Associate of another person 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 other person or an Associate of that other person.

- (5) A Company is an Associate of another Company if—
- (a) the same person has control of both;
 - (b) a person has control of one and persons who are his Associates have control of the other (or collectively they have control); or
 - (c) a group of two or more persons has control of each Company, and the groups either—
 - (i) consist of the same persons; or
 - (ii) could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an Associate.
- (6) A Company is an Associate of another person if that person has control of it or if that person and persons who are his Associates together have control of it.
- (7) In this paragraph 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 any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child.
- (8) In this paragraph any Director or other officer of a Company is to be treated as employed by that Company.
- (9) In this paragraph a person is to be taken as having 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 more than 50% 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 either of the above conditions, they are to be taken as having control of the Company.
- (10) In this Section, "Company" includes any body corporate (whether incorporated in the Abu Dhabi Global Market or elsewhere); and references to Directors and other officers of a Company and to voting power at any general meeting of a Company have effect with any necessary modifications.

301. Meaning of "capital market arrangement"

- (1) For the purposes of Section 152 (*Appointment and powers of receivers and administrative receivers*) 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; or
 - (b) it involves a grant of security to—
 - (i) a party to the arrangement who issues a capital market investment; or
 - (ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment; or

- (c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party; or
 - (d) at least one party guarantees the performance of obligations of another party; or
 - (e) at least one party provides security in respect of the performance of obligations of another party; or
 - (f) the arrangement involves an investment of a kind described in paragraphs 94 to 96 of Schedule 1 (*Regulated Activities*) of the Financial Services and Markets Regulations 2015 (*Options, futures and contracts for differences*).
- (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;
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it; and
 - (d) the reference to the provision of finance includes the provision of an indemnity.
- (3) In Section 152(8)(a) (*Appointment and powers of receivers and administrative receivers*) and this paragraph “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.

302. Meaning of “capital market investment”

- (1) For the purposes of Section 152 (*Appointment and powers of receivers and administrative receivers*) an investment is a “**capital market investment**” if it—
- (a) is within paragraphs 88 (*Instruments creating or acknowledging indebtedness*) or 89 (*Sukuk*) and does not fall within paragraph 90 (*Government and public Financial Instruments*) of Schedule 1 (*Regulated Activities*) of the Financial Services and Markets Regulations 2015 and is rated, listed, or traded or designed to be rated, listed or traded; or
 - (b) is rated, listed or traded or designed to be rated, listed or traded.

- (2) In subsection (1)—

“**rated**” means rated for the purposes of investment by an internationally recognised rating agency;

“**listed**” means admitted to the Official List (as defined in the Financial Services and Markets Regulations 2015); and

“traded” means admitted to trading on a relevant market (as defined in paragraph 33(3) (*Promotions required or permitted by the rules of certain markets*) of Schedule 2 (*Financial promotions*) of the Financial Services and Markets Regulations 2015).

- (3) An investment is also a capital market investment for the purposes of section 152 (*Appointment and powers of receivers and administrative receivers*) of these Regulations if it consists of a bond or commercial paper issued to a person in a territory or jurisdiction other than the Abu Dhabi Global Market who under the law of that territory or jurisdiction is not prohibited from investing in bonds or commercial paper.
- (4) In subsection (3)—

“bond” shall be construed in accordance with paragraph 88 (*Instruments creating or acknowledging indebtedness*) of Schedule 1 (*Regulated Activities*) of the Financial Services and Markets Regulations 2015 and includes any instrument falling within paragraph 89 (*Sukuk*) of that Schedule; and

“commercial paper” has the meaning given by paragraph 41(3) (*Sums received in consideration for the issue of debt financial instruments*) of Schedule 1 (*Regulated Activities*) of the Financial Services and Markets Regulations 2015.

303. Meaning of “project company”

- (1) 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;
 - (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) But 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.

304. Meaning of “step-in rights”

- (1) A person 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.

305. Meaning of “financed project”

A project is a “**financed project**” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least \$50 million for the purposes of carrying out the project.

306. Short title, extent and commencement

- (1) These Regulations may be cited as the Insolvency Regulations 2022.
- (2) These Regulations apply in the Abu Dhabi Global Market.
- (3) These Regulations shall come into force on the date of their publication. The Board may by rules make transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit.
- (4) The Insolvency Regulations 2015, the Insolvency (Amendment) Regulations 2015, the Insolvency (Amendment No. 2) Regulations 2016, the Insolvency (Amendment No. 3) Regulations 2018, the Insolvency (Amendment No. 4) Regulations 2020, the Insolvency (Amendment No. 1) Regulations 2021, the Insolvency Regulations (Amendment No. 2) 2021 and the Insolvency Regulations (Amendment No. 1) 2022 are repealed.

PART 12 : CONFIRMATION OF APPLICATION OF THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

307. Framework

- (1) In this Part 12 (*Confirmation of Application of the Cape Town Convention and Aircraft Protocol*):
 - (a) **“the Cape Town Convention”** means the Convention on International Interests in Mobile Equipment signed at Cape Town on 16th November 2001;
 - (b) **“the Aircraft Protocol”** means the Protocol to the Cape Town Convention on matters specific to Aircraft Equipment signed at Cape Town on 16th November 2001;
 - (c) **“Protocol Regulations”** means regulations made or approved by the Supervisory Authority pursuant to the Aircraft Protocol; and
 - (d) **“Declarations”** means the declarations lodged by the United Arab Emirates (the **“UAE”**):
 - (i) under the Cape Town Convention (the **“UAE Convention Declarations”**); and
 - (ii) under the Aircraft Protocol (the **“UAE Protocol Declarations”**),in each case at the time of deposit by the UAE of its instruments of accession to the Cape Town Convention and as such Declarations may be amended, restated or re-submitted by the UAE from time to time.
- (2) The text of the Cape Town Convention is set out in Schedule 14 (*Cape Town Convention*).
- (3) The text of the Aircraft Protocol is set out in Schedule 15 (*Cape Town Convention - Aircraft Protocol*).
- (4) The UAE Convention Declarations are set out in Schedule 16 (*Cape Town Convention Declarations*).
- (5) The UAE Protocol Declarations are set out in Schedule 17 (*Cape Town Convention - Aircraft Protocol Declarations*).
- (6) The Cape Town Convention and the Aircraft Protocol may be referred to together as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

308. Cape Town Convention to have effect in the law of the Abu Dhabi Global Market

- (1) The provisions in this Part 12 confirm that the Cape Town Convention and the Aircraft Protocol shall apply and have legal force in, and form part of the law of, the Abu Dhabi Global Market, subject in each case to the declarations made by the UAE in the Declarations.
- (2) The provisions in this Part 12 are to be applied in accordance with the provisions of—
 - (a) the Cape Town Convention;
 - (b) the Aircraft Protocol;
 - (c) Protocol Regulations; and

- (d) the Declarations.
- (3) To the extent that there is any conflict or inconsistency between this Part 12, the Cape Town Convention and the Aircraft Protocol on the one hand and the Declarations on the other hand, the Declarations shall prevail.
- (4) Subject to subsection (3) above, to the extent that there is any conflict or inconsistency between this Part 12, the Cape Town Convention and the Aircraft Protocol on the one hand and the other laws of the Abu Dhabi Global Market which address any matter governed by this Part 12, the Cape Town Convention or the Aircraft Protocol on the other hand, this Part 12 (in its application of the Cape Town Convention and the Aircraft Protocol) shall prevail.

309. International interest to have effect in the law of the Abu Dhabi Global Market

- (1) This Part 12 confirms that the international interest provided for by Articles 2 to 7 of the Cape Town Convention is recognised in the Abu Dhabi Global Market in relation to aircraft objects.
- (2) In accordance with subsection (1), the international interest has effect where the conditions of the Cape Town Convention and the Aircraft Protocol are satisfied (with no requirement to determine whether a proprietary right has been validly created or transferred pursuant to the common law *lex situs* rule as incorporated into the laws of the Abu Dhabi Global Market pursuant to the Application of English Law Regulations 2015).

310. Registration procedure

- (1) Registration of an international interest or other matter in accordance with the Cape Town Convention (including any amendment or extension) has effect for the purposes of this Part 12 only if and to the extent that it complies with the provisions of Articles 18 to 20 of the Cape Town Convention (*registration requirements; validity and time of registration; consent to registration*) as modified or supplemented by Article XX of the Aircraft Protocol and by Protocol Regulations.
- (2) A document in the form prescribed by the Protocol Regulations which purports to be a certificate issued by the International Registry is to be taken as evidence unless proved to the contrary—
 - (a) that it has been so issued; and
 - (b) of the facts recited in it, including the date and time of registration.

311. Effects of insolvency

- (1) In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with the Cape Town Convention and the Aircraft Protocol.
- (2) Nothing in this Section impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the law of the Abu Dhabi Global Market or the applicable law.
- (3) Nothing in this Section affects—
 - (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer to the detriment of creditors; or

- (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency office holder.

312. Remedies on insolvency

- (1) Nothing in this Section affects the generality of Section 308(4) (Cape Town Convention to have effect in the law of the Abu Dhabi Global Market).
- (2) In accordance with Article XXX(3) of the Aircraft Protocol, the UAE Protocol Declaration provides that Alternative A of Article XI of the Aircraft Protocol shall apply in its entirety to all types of insolvency proceeding and all other insolvency-related events and that the waiting period for the purposes of Article XI(3) of the Aircraft Protocol shall be sixty (60) calendar days.
- (3) By way of confirmation of the application of Alternative A of Article XI of the Aircraft Protocol and the sixty (60) day waiting period within the Abu Dhabi Global Market—
 - (a) the remedies set out in Alternative A of Article XI of the Aircraft Protocol are in addition to the provisions of Part 1 (*Administration*);
 - (b) Section 45 (*Moratorium on other legal process*) and Section 46 (*Interim Moratorium*) do not apply after the end of the waiting period under Alternative A of Article XI of the Aircraft Protocol;
 - (c) Section 100 (Charged property), Section 101 (Hire purchase property) and Section 102 (Disposal of charged property) do not apply;
 - (d) the notice under Section 48 (*Announcement of administrator's appointment*) must include a statement that Alternative A of Article XI of the Aircraft Protocol applies, together with a statement of the effect of the application of that Article;
 - (e) the statement of the administrator's proposals under Section 56 (*Administrator's proposals*) must include details of what the administrator proposes in respect of assets to which Alternative A of Article XI of the Aircraft Protocol applies;
 - (f) Section 75 (Creditor etc. not to act inconsistently with deed before its execution), Section 76 (Effect of Deed of Company Arrangement on creditors), Section 78 (Protection of Company's property) and Section 79 (Court may limit rights) do not apply after the end of the waiting period under Alternative A of Article XI of the Aircraft Protocol; and
 - (g) the progress report by the administrator of a Deed of Company Arrangement under Section 94 (*Deed progress reports*) must (to the extent applicable in the context of the relevant Deed of Company Arrangement) include details of what the administrator proposes in respect of assets to which Alternative A of Article XI of the Aircraft Protocol applies.
- (4) By way of confirmation of the application of Alternative A of Article XI of the Aircraft Protocol and the sixty (60) day waiting period within the Abu Dhabi Global Market:
 - (a) a payment made for the purpose of maintaining and preserving the aircraft object in accordance with paragraph (5) of Alternative A of Article XI of the Aircraft Protocol is an expense of administration;
 - (b) a payment made for the purpose of curing a default as mentioned in paragraph (7) of Alternative A of Article XI of the Aircraft Protocol for the purpose of retaining possession is an expense of administration; and

- (c) the end of the waiting period under Alternative A of Article XI of the Aircraft Protocol is without prejudice to the continuation of insolvency proceedings in respect of assets to which Alternative A of Article XI of the Aircraft Protocol does not apply.
- (5) In this Section “insolvency-related event” means:
 - (a) the commencement of insolvency proceedings; or
 - (b) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Cape Town Convention is prevented or suspended by law or State action.

313. Consequential amendments to the Companies Regulations 2020

Section 784 (*Charges created by a company*) of the Companies Regulations 2020 is not to apply to a charge which is an international interest.

314. Definitions and Interpretation

- (1) In this Part 12, unless otherwise defined in this Part or the context indicates otherwise, the defined terms listed below shall have the following meanings—

“**agreement**” means a security agreement, a title reservation agreement or a leasing agreement;

“**aircraft**” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

“**aircraft engines**” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and—

- (a) in the case of jet propulsion aircraft engines, have at least 1750lb of thrust or its equivalent; and
- (b) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating to them;

“**aircraft objects**” means airframes, aircraft engines and helicopters;

“**airframes**” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are of a type certified by the competent aviation authority to transport—

- (a) at least 8 persons including crew; or
- (b) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating to them;

“**applicable law**” means the domestic rules of the law applicable by virtue of the rules of private international law of a State; and where a State comprises several territorial

units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit—

- (a) the law of that State decides which is the territorial unit whose rules govern; and
- (b) in the absence of any such rule, the law of the territorial unit with which the case is most closely connected applies;

“Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7th December 1944, as amended, and its Annexes;

“commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

“conditional buyer” means a buyer under a title reservation agreement;

“conditional seller” means a seller under a title reservation agreement;

“contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement (as defined);

“the court” is a reference to a court which has jurisdiction in accordance with these Regulations (or which has jurisdiction to hear insolvency proceedings, as the case may be);

“creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

“debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement or a lessee under a leasing agreement;

“helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more powerdriven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport—

- (a) at least 5 persons including crew; or
- (b) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating to them;

“insolvency office holder” means a person authorised to administer insolvency proceedings, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

“insolvency proceedings” means liquidation, bankruptcy, sequestration or other collective judicial or administrative insolvency proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court (or liquidation committee);

“international interest” means an interest held by a creditor to which Article 2 of the Cape Town Convention applies;

“International Registry” means the international registration facilities established for the purposes of the Cape Town Convention and the Aircraft Protocol;

“leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an aircraft object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

“registered” means registered in the International Registry pursuant to Chapter V of the Cape Town Convention;

“sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

“security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

“State” includes territory;

“Supervisory Authority” means, in respect of the Aircraft Protocol, the Supervisory Authority referred to in Article 17(1) of the Cape Town Convention; and

“title reservation agreement” means an agreement for the sale of an aircraft object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement.

- (2) Any terms used but not defined in this Part 12 shall have the meaning given to them in:
- (a) the Cape Town Convention, the Aircraft Protocol, the Protocol Regulations or the Declarations (as applicable); or if no such term exists,
 - (b) the Interpretation Regulations 2015.

SCHEDULE 1

MEETINGS, TIME LIMITS, NOTICES AND DOCUMENTS

PART 1

MEETINGS AND TIME LIMITS

1. Conduct of meetings

Where these Regulations require or permit a meeting of creditors, members or contributories to be held (or an alternative process to be followed), the provisions of Schedule 6 (*Meetings and Correspondence*) shall govern the conduct of such meeting or alternative process.

2. Attendance at meetings and proxies

(1) The following provisions also apply for the interpretation of these Regulations.

(2) A person attends a meeting if he—

(a) is physically present, or attends remotely in accordance with paragraph 18 (*Remote attendance at meetings*) of Part 6 (*Constitution of Meetings*) of Schedule 6 (*Meetings and Correspondence*) or paragraph 19 (*Remote attendance at meetings of creditors' committees*) of Part 4 (*Meetings of Committee*) of Schedule 7 (*Creditors' Committees*); or

(b) attends by proxy or by corporate representative.

(3) A “**proxy**” is a document which complies with the following requirements—

(a) it is a document which is given by a creditor, member or contributory to another person (“**the proxy-holder**”) authorising the proxy-holder to attend, and to speak and vote at, a meeting as the representative of the creditor, member or contributory; and

(b) either that document—

(i) directs the proxy-holder to vote or abstain, or to propose resolutions, as directed; or

(ii) authorises the proxy-holder to do so in accordance with the proxy-holder’s discretion.

(4) A “**blank proxy**” is a document which complies with paragraph 37 (*Blank proxies*) of Part 11 (*Proxies and corporate representation*) of Schedule 6 (*Meetings and Correspondence*).

3. Time limits

(1) The ADGM Court Procedure Rules which provide for the calculation of periods of time expressed in days apply to the calculation of periods expressed in days in these Regulations.

- (2) The beginning and the end of a period expressed in months in these Regulations are to be determined as follows—
- (a) if the beginning of the period is specified—
 - (i) the month in which the period ends is the specified number of months after the month in which it begins; and
 - (ii) the date in the month on which the period ends is—
 - (aa) the date corresponding to the date in the month on which it begins; or
 - (bb) if there is no such date in the month in which it ends, the last day of that month;
 - (b) if the end of the period is specified—
 - (i) the month in which the period begins is the specified number of months before the month in which it ends; and
 - (ii) the date in the month on which the period begins is—
 - (aa) the date corresponding to the date in the month on which it ends; or
 - (bb) if there is no such date in the month in which it begins, the last day of that month.
- (3) The provisions of the ADGM Court Procedure Rules which provide for the Court's general powers of management apply so as to enable the Court to extend or shorten the time for compliance with anything required or authorised to be done by these Regulations.

PART 2

FORM AND CONTENT OF DOCUMENTS

4. Requirement for writing

A notice or statement must be in writing unless a provision in these Regulations provides otherwise.

5. Form

- (1) A document must be in electronic or hard-copy form.
- (2) A document in electronic form must be capable of being—
 - (a) read by the recipient in electronic form; and
 - (b) reproduced by the recipient in hard-copy form.

6. Authentication

- (1) A document in electronic form is sufficiently authenticated—
 - (a) if the identity of the sender is confirmed in a manner specified by the recipient; or

- (b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.
- (2) A document in hard-copy form is sufficiently authenticated if it is signed.
- (3) If a document is authenticated by the signature of an individual on behalf of—
 - (a) a body of persons, the document must also state the position of that individual in relation to the body;
 - (b) a body corporate of which the individual is the sole member, the document must also state that fact.

7. Information required to identify persons and proceedings

Where these Regulations require a document to identify various persons, provide contact details for an Office-holder or identify proceedings that must be done by providing the information set out below.

Company or unregistered company	<p>In the case of a Company—</p> <ul style="list-style-type: none"> (1) its registered name; and (2) its registered number or equivalent. <p>In the case of a non-Abu Dhabi Global Market Company—</p> <ul style="list-style-type: none"> (1) its name; (2) the country or territory in which it is incorporated; (3) the postal address of its principal place of business; and (4) the number, if any, under which it is so registered.
Debtor	<ul style="list-style-type: none"> (1) full name; and (2) residential address (subject to any order for limited disclosure under the ADGM Court Procedure Rules).
Office-holder or proposed Office-holder	<ul style="list-style-type: none"> (1) the name of the Office-holder or proposed Office-holder; and (2) the nature of the appointment held by the Office-holder or to be held by the proposed Office-holder.
contact details for an Office-holder	<ul style="list-style-type: none"> (1) a postal address for the Office-holder; and (2) either an email address, or a telephone number, through which the Office-holder may be contacted.

proceedings	<p>(1) for proceedings relating to a Company or unregistered company, the information identifying the Company or unregistered company; and</p> <p>(2) if applicable, any number assigned by the Court to those proceedings.</p>
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PART 3

STANDARD CONTENTS OF NOTICES TO BE PUBLISHED IN THE ABU DHABI GLOBAL MARKET

Note: The requirements in Parts 3 to 7 of this Schedule must be read with paragraph 7 (Information required to identify persons and proceedings) of Part 2 of this Schedule.

8. Contents of notices to be published in the Abu Dhabi Global Market

- (1) A notice which these Regulations require to be published in the Abu Dhabi Global Market must contain the standard contents set out in this Part 3 in addition to any content specifically required by any other provision of these Regulations.
- (2) Notices must, if it is relevant to the particular notice, identify the Office-holder and specify—
 - (a) the Office-holder's contact details;
 - (b) the name of any person other than the Office-holder (if any) who may be contacted about the proceedings;
 - (c) the date of the Office-holder's appointment, and—
 - (i) the Court name and any number assigned to the proceedings by the Court; or
 - (ii) the reference assigned to the proceedings by the Court.
- (3) Information which this Part 3 requires to be included in a notice to be published in the Abu Dhabi Global Market may be omitted if it is not reasonably practicable to obtain it.

9. Notices relating to a Company or unregistered company to be published in the Abu Dhabi Global Market

A notice relating to a Company or a non-Abu Dhabi Global Market Company must also identify the Company or a non-Abu Dhabi Global Market Company and specify—

- (a) its registered office, or if a non-Abu Dhabi Global Market Company, the postal address of its principal place of business;
- (b) any principal trading address if this is different from its registered office;
- (c) any name under which it was registered in the 12 months before the date of the commencement of the proceedings which are the subject of the Abu Dhabi Global Market notice; and

- (d) any name or style (other than its registered name) under which—
 - (i) the Company or a non-Abu Dhabi Global Market Company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

10. The document published in the Abu Dhabi Global Market containing the notice - as evidence, variations and errors

- (1) A copy of the document published in the Abu Dhabi Global Market containing any notice required by these Regulations to be published in the Abu Dhabi Global Market is evidence of any facts stated in the notice.
- (2) Where these Regulations require notice of an order of the Court to be published in the Abu Dhabi Global Market, a copy of the document published in the Abu Dhabi Global Market containing the notice may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the notice.
- (3) Where an order of the Court, which has been published in the Abu Dhabi Global Market, has been varied, or any matter has been erroneously or inaccurately published in the Abu Dhabi Global Market, the person whose responsibility it was to publish the order or other matter in the Abu Dhabi Global Market must as soon as is reasonably practicable cause the variation to be published in the Abu Dhabi Global Market or a further entry to be published in the Abu Dhabi Global Market for the purpose of correcting the error or inaccuracy.

PART 4

STANDARD CONTENTS OF NOTICES ADVERTISED IN SUCH MANNER AS THE OFFICE-HOLDER THINKS FIT

11. Contents of notices advertised in such manner as the Office-holder thinks fit

- (1) This Part 4 sets out the requirements for notices under these Regulations which may be advertised otherwise than by way of being published in the Abu Dhabi Global Market.
- (2) Such notices must, in addition to any content specifically required by these Regulations or any other provision of these Regulations, contain the standard contents set out in this Part.
- (3) Where such notices are placed by the Office-holder they must also—
 - (a) identify the Office-holder; and
 - (b) specify the Office-holder's contact details.
- (4) Information which this Part 4 requires to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

12. Other advertised notices relating to a Company or an unregistered company

A notice relating to a Company or a non-Abu Dhabi Global Market Company must also identify the Company or a non-Abu Dhabi Global Market Company and state—

- (a) its principal trading address;
- (b) any name under which it was registered in the 12 months before the date of the commencement of the proceedings which are the subject of the notice; and

- (c) any name or style (other than its registered name) under which—
 - (i) the Company or a non-Abu Dhabi Global Market Company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

13. Other advertised notices - other provisions

Information which this Part 4 requires to be contained in a notice must be included in an advertisement of that notice in a way that is clear and comprehensible.

PART 5

STANDARD CONTENTS OF DOCUMENTS TO BE DELIVERED TO THE REGISTRAR ETC.

14. Requirements of documents delivered to the Registrar

- (1) A document which these Regulations require to be delivered to the Registrar must contain the standard contents set out in this Part in addition to any content specifically required by any other provision of these Regulations.
- (2) A document of more than one nature must satisfy the requirements which apply to each.
- (3) However, the requirements in respect of a document which is to be delivered to another person at the same time as the Registrar, may be satisfied by delivering to that other person a copy of the document delivered to the Registrar.

15. Standard contents of documents delivered to the Registrar

A document to be delivered to the Registrar must—

- (a) identify the Company or, if applicable, the non-Abu Dhabi Global Market Company;
- (b) specify—
 - (i) the nature of the document;
 - (ii) the Section of these Regulations, paragraph of a Schedule to these Regulations or any provision of these Regulations under which the document is delivered;
 - (iii) the date of the document;
 - (iv) the name and postal address of the person delivering the document; and
 - (v) the capacity in which that person is acting in relation to the Company or, if applicable, the non-Abu Dhabi Global Market Company; and
- (c) be authenticated by the person delivering the document.

16. Standard contents of documents relating to the office of Office-holders

A document relating to the office of the Office-holder must also identify the Office-holder and specify—

- (a) the date of the event of which notice is delivered;

- (b) where the document relates to an appointment, the person making the appointment, or if the Court is making the appointment then specify that it is doing so;
- (c) where the document relates to the termination of an appointment, the reason for that termination; and
- (d) the contact details for the Office-holder.

17. Standard contents of documents relating to other documents

A document relating to another document must also specify—

- (a) the nature of the other document;
- (b) the date of the other document; and
- (c) where the other document relates to a period of time, the period of time to which it relates.

18. Standard contents of documents relating to Court orders

A document relating to a Court order must also specify—

- (a) the nature of the order; and
- (b) the date of the order.

19. Standard contents of returns or reports of meetings

A return or report of a meeting must also specify—

- (a) the purpose of and venue for the meeting;
- (b) whether a required quorum was in attendance for the meeting to take place; and
- (c) if the meeting took place, the outcome of the meeting (including any resolutions passed).

20. Standard contents of returns or reports of matters considered by correspondence

A return or report of a matter, consideration of which has been sought by correspondence, must also specify—

- (a) the purpose of the consideration; and
- (b) the outcome of the consideration (including any resolutions passed or deemed to be passed).

21. Standard contents of documents relating to other events

A document relating to any other event must also specify—

- (a) the nature of the event, including the Section of these Regulations, paragraph of a Schedule to these Regulations or other provision of these Regulations under which it took place; and
- (b) the date on which the event occurred.

PART 6

STANDARD CONTENTS OF NOTICES FOR DELIVERY TO OTHER PERSONS ETC.

22. Standard contents of notices to be delivered to persons other than the Registrar

- (1) This Part 6 applies to notices which these Regulations require to be delivered to any person other than the Registrar.
- (2) Such notices must contain the standard contents set out in this Part 6 in addition to any content specifically required by these Regulations.
- (3) A notice of more than one nature must satisfy the requirements which apply to each.

However the requirements in respect of a document which is to be delivered to another person at the same time as the Registrar, may be satisfied by delivering to that other person a copy of the document delivered to the Registrar.

23. Standard contents of all notices

A notice must—

- (a) specify the nature of the notice;
- (b) in the case of proceedings relating to a Company or, if applicable, a non-Abu Dhabi Global Market Company, identify the Company or the non-Abu Dhabi Global Market Company;
- (c) specify the Section of these Regulations, paragraph of a Schedule to these Regulations or other provision of these Regulations under which the notice is given; and
- (d) in the case of a notice delivered by the Office-holder, specify the contact details for the Office-holder.

24. Standard contents of notices relating to the office of Office-holders

A notice relating to the office of the Office-holder must also identify the Office-holder and specify—

- (a) the date of the event of which notice is delivered;
- (b) where the notice relates to an appointment, the person making the appointment or, if the Court is making the appointment, then specify that it is doing so; and
- (c) where the notice relates to the termination of an appointment, the reason for that termination.

25. Standard contents of notices relating to documents

A notice relating to a document must also specify—

- (a) the nature of the document;
- (b) the date of the document; and
- (c) where the document relates to a period of time, the period of time to which the document relates.

26. Standard contents of notices relating to Court proceedings or orders

A notice relating to Court proceedings must also identify those proceedings (including the Court name and any assigned number to the proceedings by the Court) and if the notice relates to a Court order, specify -

- (a) the nature of the Court order; and
- (b) the date of the order.

27. Standard contents of notices of the results of meetings

A notice of the result of a meeting must also specify—

- (a) the purpose of and venue for the meeting;
- (b) whether a required quorum was in attendance for the meeting to take place; and
- (c) if the meeting took place, the outcome of the meeting (including any resolutions passed).

28. Standard contents of returns or reports of matters considered by correspondence

A return or report of matters, consideration of which has been sought by correspondence, must also specify—

- (a) the purpose of the consideration; and
- (b) the outcome of the consideration (including any resolutions passed or deemed to be passed).

PART 7

APPLICATIONS TO THE COURT

29. Standard contents and authentication of applications to the Court

(1) Subject to any relevant practice direction, an application to Court must state—

- (a) that the application is made under these Regulations;
- (b) the Section of these Regulations or paragraph of a Schedule to these Regulations under which it is made;
- (c) the names of the parties;
- (d) the name of the Company or non-Abu Dhabi Global Market Company which is the subject of the insolvency proceedings to which the application relates;
- (e) where the Court has previously allocated a number to the Insolvency Proceedings within which the application is made, that number;
- (f) the nature of the remedy or order applied for or the directions sought from the Court;
- (g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

- (h) where these Regulations require that notice of the application be delivered to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
 - (i) the applicant's address for service.
- (2) The application must be authenticated by or on behalf of the applicant or the applicant's solicitor or legal representative.

29A Orders and procedures of the Court

- (1) Nothing in these Regulations shall:
 - (a) prevent the Court from making such orders or providing such directions as it considers appropriate; or
 - (b) limit or override any provision of the ADGM Court Procedure Rules or any practice direction unless otherwise stated.
- (2) Without limiting subparagraph (1), the Court shall be entitled to make or publish such rules or practice directions that it considers appropriate in connection with the conduct of Insolvency Proceedings and related matters before the Court.

29B. Formal defects

No Insolvency Proceedings shall be invalidated by any formal defect or by any other irregularity, unless the Court before which the objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

29C. Block transfer order

The Court may make a block transfer order subject to and in accordance with the relevant practice direction.

PART 8

DELIVERY OF DOCUMENTS AND OPTING OUT

30. Application of Part

- (1) This Part 8 applies where a document is required under these Regulations to be delivered, filed, forwarded, given, sent, or submitted unless—
 - (a) these Regulations or an order of the Court makes different provision including one requiring service on a person; or
 - (b) the recipient of a document is the Registrar.
- (2) A document is delivered, filed, forwarded, given, sent, or submitted if it is delivered in accordance with this Part 8.
- (3) Where these Regulations require an Office-holder to deliver a document to all the creditors, that requirement is satisfied by the delivery of that document to all those creditors of whose address the Office-holder is aware who have not opted out of receiving the particular document.

31. Opting out

- (1) Any provision of the Regulations which requires an Office-holder of a Company or a Deed of Company Arrangement to deliver, furnish, send or otherwise give a notice (which for this purpose includes any document or information in any other form) to creditors of a Company does not apply, in the circumstances prescribed in the Regulations, in relation to opted-out creditors, other than—
 - (a) in relation to a notice of a distribution or proposed distribution to creditors; or
 - (b) if any order of the Court requires a notice to be given to all creditors (or all creditors of a particular category).
- (2) Except as provided by the Regulations, a creditor may participate and vote in a meeting of creditors or other voting procedure described in Schedule 6 (*Meetings and Correspondence*) even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.
- (3) The Office-holder must, in the first communication to creditors, ask them by a notice in writing if they wish to opt out of receiving further documents relating to the Insolvency Proceedings.
- (4) Such a notice must be sent to all the creditors.
- (5) The notice must identify the Insolvency Proceedings and the Office-holder and provide contact details for the Office-holder and state that—
 - (a) the creditor is entitled to receive documents about the Insolvency Proceedings;
 - (b) the creditor may opt out of receiving further documents about the Insolvency Proceedings except any which relate to the payment of a distribution to creditors;
 - (c) opting out will not affect the creditor's entitlement to receive distributions should any be paid to creditors;
 - (d) in order to opt out the creditor must deliver to the Office-holder a notice in writing identifying the Insolvency Proceedings and the creditor which must be authenticated by the creditor; and
 - (e) the creditor has the right to revoke the opt out at any time by delivering to the Office-holder a further notice which identifies the Insolvency Proceedings and the Office-holder and—
 - (i) states that the creditor wishes to revoke the opt out previously given from receiving further documents about the Insolvency Proceedings; and
 - (ii) is authenticated by the creditor.
- (6) A notice opting out and a revocation of a notice opting out each have effect from the date of delivery of the notice to the Office-holder.
- (7) Where a creditor has opted out, then any requirement of these Regulations for an Office-holder to deliver documents to all creditors will not extend to that creditor except as described in sub-paragraph (1)(a) or (b).
- (8) Any percentage of creditors which these Regulations require for any purpose is to be calculated solely by reference to those creditors who have not opted out at the time in question.

32. Delivery of documents to authorised recipients

Where under these Regulations a document is to be delivered to a person (other than by being served on that person), it may be delivered instead to any other person authorised to accept delivery on behalf of the first-mentioned person.

33. Deliver of documents to joint Office-holders

Where there are joint Office-holders in Insolvency Proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

34. Postal delivery of documents

- (1) A document is delivered if it is sent by post.
- (2) Unless the contrary is shown—
 - (a) a document sent by post is treated as delivered on the third business day after the day on which it is posted; and
 - (b) where a post-mark appears on the envelope in which a document was posted, the date of that post-mark is to be treated as the date on which the document was posted.
- (3) In this rule “post-mark” means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

35. Personal delivery of documents

A document is delivered if it is personally delivered in accordance with the rules for personal service in the ADGM Court Procedure Rules.

36. Electronic delivery of documents

- (1) A document is delivered if it is sent by electronic means and the following conditions are met.
- (2) The conditions are that the intended recipient of the document has—
 - (a) given consent for the electronic delivery of the document;
 - (b) not revoked that consent before the document is sent; and
 - (c) provided an electronic address for the delivery of the document.
- (3) Consent may relate to a specific document or to documents generally.
- (4) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—
 - (a) contains the document; and
 - (b) shows the time and date the communication was sent and the electronic address to which it was sent.
- (5) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.

- (6) Nothing in this section modifies any provision of the ADGM Court Procedure Rules or any practice direction in relation to the electronic delivery of documents to or from the Court.

37. Electronic delivery of documents to the Court

- (1) Any document that is required under these Regulations to be filed with or delivered to the Court shall be filed or delivered in accordance with the relevant practice direction.
- (2) Any document, including notice of any document, that is required under these Regulations to be provided or delivered by the Court to a person shall be provided or delivered through the eCourts Platform, or by such other means that the Court considers appropriate.

38. Electronic delivery of notice to enforcement officers

Where anything in these Regulations provides for the delivery of a notice to an enforcement officer, it may be delivered by electronic means to a person who has been authorised to receive such notice on behalf of a specified enforcement officer or on behalf of enforcement officers generally.

39. Electronic delivery by Office-holders

- (1) Where an Office-holder delivers a document by electronic means, the document must—
- (a) contain, or be accompanied by, a statement that the recipient may request a hard copy of the document; and
 - (b) specify a telephone number, email address and postal address which may be used to make that request.
- (2) An Office-holder must deliver a hard copy of the document to the recipient within five business days of receipt of a request.
- (3) An Office-holder must not require the person requesting a hard copy to pay a fee for supplying it.

40. Proof of delivery of documents

- (1) A certificate complying with this paragraph is proof that a document has been duly delivered to the recipient in accordance with this Part 8 unless the contrary is shown.
- (2) A certificate must state the method of delivery and the date of the sending, posting or delivery (as the case may be).
- (3) In the case of a receiver or administrative receiver the certificate must be given by—
- (a) the receiver or administrative receiver; or
 - (b) a member of the receiver or administrative receiver's staff.
- (4) In the case of an Office-holder (other than receivers and administrative receivers), the certificate must be given by—
- (a) the Office-holder;
 - (b) the Office-holder's solicitor or legal representative; or
 - (c) a partner or an employee of either of them.

- (5) In the case of a person other than an Office-holder the certificate must be given by that person and state—
 - (a) that the document was delivered by that person; or
 - (b) that another person (named in the certificate) was instructed to deliver it.
- (6) A certificate under this paragraph 40 may be endorsed on a copy of the document to which it relates.
- (7) Once a proof has, or details of a claim have, been delivered to an Office-holder in accordance with these Regulations, it need not be delivered again; and accordingly, where a provision of these Regulations requires delivery of a proof or details of a claim by a certain time, that requirement is satisfied if the proof has or the details have already been delivered.

PART 9

INSPECTION OF DOCUMENTS, COPIES AND PROVISION OF INFORMATION

41. Right to copy documents

Where these Regulations give a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of a reasonable fee.

42. Charges for copies of documents provided by the Office-holder

Except where prohibited by these Regulations, a person is entitled to require the payment of a reasonable fee for copies of documents requested by a creditor, member, contributory or member of a Liquidation Committee or creditors' committee.

42A. Inspection of documents on the Court file

A person may inspect a document on the Court file subject to and in accordance with the relevant practice direction.

43. Contravention in relation to inspection of documents

- (1) A contravention will be committed if a person who does not have a right under these Regulations to inspect a relevant document falsely claims to be a creditor, a member of a Company or a contributory of a Company with the intention of gaining sight of the document.
- (2) A relevant document is one which is on the Court file or held by the Office-holder or any other person and which a creditor, or member or contributory of a Company has the right to inspect under these Regulations.
- (3) A person guilty of a contravention under this paragraph 43 is liable to a fine at the relevant level set out in the Fines Schedule.

44. Right to list of creditors

- (1) This paragraph 44 applies in the following proceedings—
 - (a) administration; or
 - (b) creditors' voluntary winding-up or a compulsory winding-up.

- (2) A creditor or a foreign representative has the right to require the Office-holder to provide a list of the creditors and the amounts of their respective debts unless, in a winding-up or an administration, a Statement of Affairs has been delivered to the Registrar.
- (3) The Office-holder on being required to provide such a list—
 - (a) must deliver it to the person requiring the list as soon as reasonably practicable; and
 - (b) may charge a reasonable fee for a hard copy.
- (4) The Office-holder may omit the name and address of a creditor if the Office-holder thinks its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person.
- (5) In such a case the list must include—
 - (a) the amount of that creditor's debt; and
 - (b) a statement that the name and address of the creditor has been omitted for that debt.

45. Confidentiality of documents - grounds for refusing inspection

- (1) Where an Office-holder considers that a document forming part of the records of the Insolvency Proceedings—
 - (a) should be treated as confidential; or
 - (b) is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person,

the Office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.
- (2) The persons to whom the Office-holder may refuse inspection include members of a creditors' committee.
- (3) Where the Office-holder refuses inspection of a document, the person wishing to inspect it may appeal to the Court.
- (4) The Court's decision may be subject to such conditions (if any) as it thinks just.

PART 10

Administration Applications

46. Administrator's written statement in support of administration application (Section 10(5), 17(1)(b), 23(1)(b), 34(1)(a), 138(1))

- (1) A written statement of an administrator seeking to act shall be titled "Proposed administrator's statement and consent to act" and shall contain:
 - (a) identification details for the Company;
 - (b) a certificate that the proposed administrator is an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) in relation to the Company;

- (c) the proposed administrator's registration details;
 - (d) the name of the relevant recognised professional body which is the source of the proposed administrator's authorisation to act in relation to the Company;
 - (e) a statement that the proposed administrator consents to act as administrator of the Company;
 - (f) details of any prior professional relationship that he has had with the Company to which he is to be appointed as administrator;
 - (g) the name of the person by whom the appointment is to be made or the applicant in the case of an application to the Court for an appointment; and
 - (h) a statement that the proposed administrator is of the opinion that the purpose of administration is reasonably likely to be achieved.
- (2) The statement and consent to act must be authenticated and dated by the proposed administrator.
 - (3) Where a number of persons are proposed to be appointed to act jointly or concurrently as the administrator of a Company, each must make a separate statement and consent to act.
- 47. Prescribed matters for Court order (Sections 19(2), 39(3)(b) and 39(5)(b))**
- (1) Where the Court makes an administration order the Court's order must be headed "Administration order" and shall contain the following, with such amendments as the Court considers appropriate:
 - (a) identification details for the proceedings;
 - (b) the name and title of the judge making the order;
 - (c) the address of the applicant;
 - (d) details of any other parties (including the Company) appearing and by whom they are represented;
 - (e) an order that during the period the order is in force the affairs, business and property of the Company is to be managed by the administrator;
 - (f) the name of the person appointed as administrator;
 - (g) an order that that person is appointed as administrator of the Company;
 - (h) the date of the order (and if the Court so orders the time); and
 - (i) such other provisions if any as the Court thinks just.
 - (2) Where two or more administrators are appointed the order must also specify:
 - (a) which functions (if any) are to be exercised by those persons acting jointly; and
 - (b) which functions (if any) are to be exercised by any or all of those persons.

48. Notice of intention to appoint an administrator by the holder of a qualifying charge (Sections 24(1), 46(3))

- (1) The notice filed with the Court must be headed “Notice of intention to appoint an administrator by holder of qualifying floating charge” and must contain the following—
- (a) identification details for the proceedings;
 - (b) the name and address of the appointor;
 - (c) a statement that the appointor intends to appoint an administrator of the Company;
 - (d) the name and address of the proposed administrator;
 - (e) a statement that the appointor is the holder of the qualifying floating charge in question and that it is now enforceable;
 - (f) details of the charge, the date upon which it was registered and the maximum amount if any secured by the charge;
 - (g) a statement that the notice is being given in accordance with Section 22(1)(a) (*Restrictions on power to appoint*) to the holder of every prior floating charge which satisfies Section 21(2) (*Power to Appoint*);
 - (h) the names and addresses of the holders of such prior floating charges and details of the charges; and
 - (i) a statement whether the Company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is.

49. Notice of intention to appoint an administrator by the Company or directors (Sections 31(3)(b), 46(4))

- (1) The notice of an appointment must be headed “Notice of intention to appoint an administrator by Company” or “Notice of intention to appoint an administrator by the directors of a Company” and must contain—
- (a) identification details for the proceedings;
 - (b) a statement that the Company, as represented by its directors or members, intends to appoint an administrator of the Company;
 - (c) the name and address of the proposed administrator;
 - (d) the names and addresses of the persons to whom notice is being given in accordance with Section 31(1) (Notice of intention to appoint);
 - (e) a statement that each of those persons is or may be entitled to appoint—
 - (i) an administrative receiver of the Company, or
 - (ii) an administrator of the Company;
 - (f) a statement that the Company has not within the preceding 12 months been in administration;
 - (g) a statement that in relation to the Company there is no—
 - (i) petition for winding up which has been presented but not yet disposed of;

- (ii) administration application which has not yet been disposed of, or
 - (iii) administrative receiver in office;
 - (h) a statement whether the Company holds or has held a Financial Services Permission or Recognition Order granted by the Financial Services Regulator;
 - (i) a statement that the notice is accompanied (as appropriate) by either—
 - (i) a copy of the resolution of the Company's members to appoint an administrator, or
 - (ii) a record of the decision of the directors to appoint an administrator; and
 - (j) a statement that if a recipient of the notice who is named in paragraph (e) wishes to consent in writing to the appointment, that person may do so but that after five business days have expired from delivery of the notice the appointor may make the appointment although such a recipient has not replied.
- (2) The notice must be accompanied by—
- (a) a copy of the resolution of the Company to appoint an administrator, where the Company intends to make the appointment, or
 - (b) a record of the decision of the directors, where the directors intend to make the appointment.
- (3) A copy of the notice must be delivered at the same time to—
- (a) any enforcement agent or other officer who, to the knowledge of the person giving the notice, is charged with distress or other legal process against the Company;
 - (b) any person who, to the knowledge of the person giving the notice, has distrained against the Company or its property;
 - (c) the Registrar; and
 - (d) the members of the Company, if the appointment has been made by the directors of the Company.
- (4) The declaration accompanying the notice in accordance with Section 31(5) (*Notice of intention to appoint*) must, if it is not made by the person making the appointment, indicate the capacity in which the person making the declaration does so.

50. Notice of appointment by creditor holding a qualifying charge (Section 23(1)(a), 23(2), 23(3)(c), 24(1), 27(1)(a))

Notice of an appointment under Section 23(1)(a) (*Notice of appointment*) must be headed "Notice of appointment of an administrator by holder of a qualifying charge" and must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the appointor;
- (c) a statement that the appointor has appointed the person named as administrator of the Company;
- (d) the name and address of the person appointed as administrator;

- (e) a statement that a copy of the administrator's consent to act accompanies the notice;
- (f) a declaration that:
 - (i) the appointor is the holder of the qualifying charge in question;
 - (ii) that the charge is now enforceable (and the details of the charge including its date of creation, registration and the maximum amount secured by the charge, or if the appointor holds no charge, a statement to that effect); and
 - (iii) the appointment is in accordance with Part 1 of the Regulations.
- (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (h) one of the following statements—
 - (i) that notice has been given in accordance with Section 24(2) (*Notice of intention to appoint*) to the holder of every prior charge and that two business days have elapsed from the date the last such notice was given (if more than one) and that a copy of every such notice was filed with the Court under Section 23(1) (*Notice of appointment*), and the date of that filing (or the latest date of filing if more than one);
 - (ii) that the holder of every such charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment;
 - (iii) that the holder of every such charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
 - (iv) that there is no such charge; and
- (i) a statement whether the Company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is.

51. Notice of appointment of administrator by Company or directors (Section 33(5))

- (1) Notice of an appointment under Section 33 (*Notice of appointment*) must be headed "Notice of appointment of an administrator by a Company" or "Notice of appointment of an administrator by the directors of a Company" and must contain—
 - (a) identification details for the Company immediately below the heading;
 - (b) a statement that the Company has, or the directors have as the case may be, appointed the person named as administrator of the Company;
 - (c) the name and address of the person appointed as administrator;
 - (d) a statement that a copy of the administrator's consent to act accompanies the notice;
 - (e) a statement that the Company is, or the directors are as the case may be, entitled to make an appointment under Section 29 (*Power to appoint*);
 - (f) a statement that the appointment is in accordance with Part 1 of the Regulations;

- (g) a statement that the Company has, or the directors have as the case may be, given notice of their intention to appoint in accordance with Section 31 (*Notice of intention to appoint*), that a copy of the notice was filed with the Court, the date of that filing and either—
 - (i) that five business days have elapsed from that date, or
 - (ii) that each person to whom the notice was given has consented to the appointment; and
 - (h) the date and time of the appointment.
- (2) Where two or more administrators are appointed the notice must also specify —
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
 - (b) which functions (if any) are to be exercised by any or all of those persons.

52. Notice of intention to resign as administrator (Sections 130(1), 131(1)),

- (1) Notice of intention to resign as administrator must contain—
- (a) identification details for the proceedings;
 - (b) the date of the appointment of the administrator;
 - (c) the name of the person who made the appointment or the administration application, as the case may be;
 - (d) the date with effect from which the administrator intends to resign; or
 - (e) where the administrator was appointed by an administration order, the date on which the administrator intends to file with the Court an application for permission to resign.
- (2) The notice must be accompanied by a summary of the administrator's receipts and payments.

53. Content of reports relating to administration, including Deed of Company Arrangement (Sections 94(1)(c), 94(2)(a). 115(2))

- (1) The administrator's progress report or final report relating to administration, including by way of Deed of Company Arrangement, must contain the following—
- (a) identification details for the proceedings;
 - (b) identification details for the Company;
 - (c) identification and contact details for the administrator;
 - (d) the date of appointment of the administrator and any changes in the administrator;
 - (e) details of progress during the period of the report, including a summary account of receipts and payments during the period of the report;
 - (f) the information relating to remuneration and expenses;
 - (g) the information relating to distributions;
 - (h) details of what remains to be done; and

- (i) any other information of relevance to the creditors.
- (2) The receipts and payments account in a final progress report must state the amount paid to unsecured creditors.
- (3) A change in the administrator is only required to be shown in the next report after the change.
- (4) However if the current administrator is seeking the repayment of pre-administration expenses from a former administrator the change in administrator must continue to be shown until the next report after the claim is settled.
- (5) Where the period of an administrator's appointment is extended, the next progress report after the date the extension is granted must contain details of the extension.
- (6) Where an administration has converted to a voluntary winding up, the first progress report by the liquidator must include a note of any information received by the liquidator from the former administrator.
- (7) The information relating to remuneration and expenses referred to in (1)(f) is as follows—
 - (a) the basis for the remuneration of the administrator;
 - (b) a statement of—
 - (i) the remuneration charged by the administrator during the period of the report, and
 - (ii) the remuneration charged by the office-holder during the periods covered by the previous reports, together with a description of the things done by the office-holder during those periods in respect of which the remuneration was charged;
 - (c) a statement of the expenses incurred by the administrator during the period of the report;
 - (d) a statement setting out whether at the date of the report—
 - (i) in a case other than a members' voluntary winding up, the remuneration expected to be charged by the administrator is likely to exceed the fees estimate or any approval given;
 - (ii) the expenses incurred or expected to be incurred are likely to exceed, or have exceeded, the details given to the creditors; and
 - (iii) the reasons for that excess; and
 - (e) a statement of the rights of creditors and, in a members' voluntary winding up, of members—
 - (i) to request information about remuneration or expenses under Section 70 (Creditors' request for further information); and
 - (ii) to challenge the administrator's remuneration and expenses under Paragraph 9 of Schedule 12.
- (8) The information about remuneration and expenses is required irrespective of whether payment was made in respect of them during the period of the report.

PART 11

Voluntary Winding Up

54. **Content of a declaration of solvency made in support of voluntary winding up (Section 175(1))**

- (1) The declaration of solvency required by Section 175 (*Declaration of solvency*) must identify the Company and state—
 - (a) the name and address for each director making the declaration;
 - (b) either—
 - (i) that all of the directors, or
 - (ii) that a majority of the directorshave made a full inquiry into the Company's affairs 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 at the official interest rate within a specified period (which must not exceed 12 months) from the commencement of the winding up; and
 - (c) that the declaration is accompanied by a statement of the Company's assets and liabilities as at a date which is stated.
- (2) The statement of the Company's assets and liabilities must contain—
 - (a) the date of the statement;
 - (b) a statement that the statement shows the assets of the Company at estimated realisable values and liabilities of the Company expected to rank as at the date referred to in subparagraph (1)(c);
 - (c) a summary of the assets of the Company, setting out the estimated realisable value of—
 - (i) any assets subject to a fixed charge,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets; and
 - (iv) the total value of all the assets available to preferential creditors;
 - (d) the value of each of the following secured liabilities of the Company expected to rank for payment—
 - (i) liabilities secured on specific assets, and
 - (ii) liabilities secured by floating charges;
 - (e) a summary of the unsecured liabilities of the Company expected to rank for payment;
 - (f) the estimated costs of the winding up and other expenses;
 - (g) the estimated amount of interest accruing until payment of debts in full; and

- (h) the estimated value of any surplus after paying debts in full together with interest at the official rate.

SCHEDULE 2

POWERS OF THE ADMINISTRATOR

- (1) Power to take possession of, collect and get in the property of the Company and, for that purpose, to take such proceedings as may seem to him expedient.
- (2) Power to sell or otherwise dispose of the property of the Company by public auction or private contract or, to sell, hire out or otherwise dispose of the property of the Company by public group or private bargain.
- (3) Power to raise or borrow money and grant security therefor over the property of the Company.
- (4) Power to appoint a solicitor or legal representative or accountant or other professionally qualified person, in each case who is licensed under the Commercial Licensing Regulations 2015 as such, to assist him in the performance of his functions.
- (5) Power to bring or defend any action or other legal proceedings in the name and on behalf of the Company.
- (6) Power to refer to arbitration any question affecting the Company.
- (7) Power to effect and maintain insurances in respect of the business and property of the Company.
- (8) Power to use the Company's seal.
- (9) Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
- (10) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
- (11) Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
- (12) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the Company.
- (13) Power to make any payment which is necessary or incidental to the performance of his functions.
- (14) Power to carry on the business of the Company.
- (15) Power to establish subsidiaries of the Company.
- (16) Power to transfer to subsidiaries of the Company the whole or any part of the business and property of the Company.
- (17) Power to grant or accept a surrender of a lease or other real property interest of the Company, and to take a lease or other real property interest required or convenient for the business of the Company.
- (18) Power to make any arrangement or compromise on behalf of the Company.
- (19) Power to call up any uncalled capital of the Company.

- (20) Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
- (21) Power to present or defend a petition for the winding-up of the Company.
- (22) Power to change the situation of the Company's registered office.
- (23) Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 3

POWERS OF ADMINISTRATIVE RECEIVER

- (1) Power to take possession of, collect and get in the property of the Company and, for that purpose, to take such proceedings as may seem to him expedient.
- (2) Power to sell or otherwise dispose of the property of the Company by public auction or private contract.
- (3) Power to raise or borrow money and grant security for that purpose over the property of the Company.
- (4) Power to appoint a legal consultant or accountant or other professionally qualified person to assist him in the performance of his functions.
- (5) Power to bring or defend any action or other legal proceedings in the name and on behalf of the Company.
- (6) Power to refer to arbitration any question affecting the Company.
- (7) Power to effect and maintain insurances in respect of the business and property of the Company.
- (8) Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
- (9) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
- (10) Power to appoint any agent to do any business which the administrative receiver is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
- (11) Power to do all such other things as may be necessary for winding-up the Company's affairs and distributing its assets.
- (12) Power to make any payment which is necessary or incidental to the performance of his functions.
- (13) Power to carry on the business of the Company.
- (14) Power to establish subsidiaries of the Company.
- (15) Power to transfer to subsidiaries of the Company the whole or part of the business and property of the Company.
- (16) Power to grant or accept a surrender of a lease or other real property interest of the Company and to take a lease or other real property interest required or convenient for the business of the Company.
- (17) Power to make any arrangement or compromise on behalf of the Company.
- (18) Power to call up any uncalled capital of the Company.
- (19) Power to present or defend a petition for the winding-up of the Company.
- (20) Power to change the situation of the Company's registered office.
- (21) Power to do all other things incidental to the foregoing powers.

SCHEDULE 4

POWERS OF LIQUIDATOR IN A WINDING-UP

- (1) Power to pay any class of creditors in full.
- (2) Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging 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.
- (3) Power to bring or defend any action or other legal proceeding in the name and on behalf of the Company.
- (4) Power to bring legal proceedings under Sections 251 (*Fraudulent trading*), 252 (*Wrongful trading*), 257 (*Transactions at an undervalue*) and 258 (*Preferences*) of these Regulations.
- (5) Power to carry on the business of the Company so far as may be necessary for its beneficial winding-up.
- (6) Power to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
- (7) Power to 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 member or other person liable to contribute to the assets of the Company or person alleged to be such or other debtor or person apprehending liability to the Company; and
 - (b) 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.
- (8) Power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company's seal.
- (9) Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any member or other person liable to contribute to the assets of the Company 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.
- (10) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with respect to the Company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the Company in the course of its business.
- (11) Power to raise on the security of the assets of the Company any money requisite.
- (12) Power to take out in his official name letters of administration to any deceased member or other person liable to contribute to the assets of the Company, and to do in his official name any other action necessary for obtaining payment of any money due from such person's estate which cannot conveniently be done in the name of the Company.

- (13) 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.
- (14) Power to appoint an agent to do any business which the liquidator is unable to do himself.
- (15) Power to do all such other things as may be necessary for winding-up the Company's affairs and distributing its assets.

SCHEDULE 5

PROOFS AND DISTRIBUTION

PART 1

INTRODUCTION

1. Application of Schedule

This Schedule applies to Part 1 (*Administration*) and Part 3 (*Winding-Up*) of these Regulations.

PART 2

INTERPRETATION

2. Definitions and Interpretation

(1) In this Schedule—

- (a) “**debt**”, in relation to winding-up or administration, means (subject to subparagraph (2)) one or more of the following—
 - (i) a debt or liability to which the Company is subject at the relevant date;
 - (ii) a debt or liability to which the Company may become subject after the relevant date by reason of any obligation incurred before that date; and
 - (iii) interest provable as mentioned in paragraph 28 (*Interest*) of Part 3 (*Creditors’ claims*) of this Schedule;
- (b) “**dividend**” in its application to a members’ voluntary winding-up includes distribution;
- (c) “**Office-holder**” means a person who, pursuant to these Regulations, holds an office as a liquidator, provisional liquidator or administrator;
- (d) “**Insolvency Proceedings**” means any winding-up proceedings or proceedings concerning provisional liquidation or administration under these Regulations as the context requires;
- (e) “**provable debt**” has the meaning given in paragraph 3 (*Provable debts*) of Part 3 (*Creditors’ claims*) of this Schedule; and
- (f) “relevant date” means—
 - (i) in the case of an administration which was not immediately preceded by a winding-up, the date on which the Company entered administration;
 - (ii) in the case of an administration which was immediately preceded by a winding-up, the date on which the Company went into liquidation;
 - (iii) in the case of a winding-up which was not immediately preceded by an administration, the date on which the Company went into liquidation; and
 - (iv) in the case of a winding-up which was immediately preceded by an administration, the date on which the Company entered administration.

- (2) For the purposes of any provision of these Regulations about winding-up or administration, a liability in tort is a debt provable in a winding-up or administration, if either—
 - (a) the cause of action has accrued at the relevant date; or
 - (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.
- (3) For the purposes of references in any provisions of these Regulations about winding-up or administration, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.
- (4) Unless defined in this Schedule, or the context otherwise requires, a term defined in these Regulations has the same meaning in this Schedule. Any reference to these Regulations includes the Schedules thereto.

PART 3

CREDITORS' CLAIMS

3. Provable debts

- (1) All claims by creditors in Insolvency Proceedings, except as provided in this paragraph, are provable as debts against the Company, whether they are present or future, certain or contingent, ascertained or sounding only in damages.
- (2) In relation to administration and winding-up, claim(s) which by virtue of these Regulations or any other enactment of the Abu Dhabi Global Market are claim(s) the payment of which in an administration or a winding-up would be postponed shall not be provable except at a time when all other claims of creditors in the Insolvency Proceedings (other than the kind mentioned in this paragraph) have been paid in full with interest under paragraph 28 (*Interest*) of Part 3 (*Creditors' claims*) of this Schedule.
- (3) Nothing in this paragraph 3 prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

4. Proving a debt

- (1) In Insolvency Proceedings (other than a members' voluntary winding-up), a person claiming to be a creditor of the Company and wishing to recover his debt in whole or in part must submit his claim in writing to the Office-holder unless—
 - (a) the Court orders otherwise;
 - (b) in a winding-up immediately preceded by an administration, the creditor has already proved in the administration; or
 - (c) in an administration immediately preceded by a winding-up, the creditor has already proved in the winding-up.
- (2) A creditor who claims is referred to as "**proving**" for his debt and a document by which he seeks to establish his claim is his "**proof**".
- (3) In a members' voluntary winding-up the Office-holder may require proof to be delivered to the liquidator.

5. Requirements for proof

- (1) A proof must—
 - (a) be made out by, or under the direction of, the creditor and authenticated by him or a person authorised in that behalf; and
 - (b) state the following matters—
 - (i) the creditor's name and address;
 - (ii) if the creditor is a Company, its registered number or equivalent;
 - (iii) the total amount of the creditor's claim (including any applicable tax) as at the relevant date, less any payments made after that date in respect of the claim, any deduction under paragraph 23 (*Discounts*) of Part 3 (*Creditors' claims*) of this Schedule and any adjustment by way of set-off in accordance with paragraphs 24 (*Administration: mutual dealings and set-off*) and 25 (*Winding-up: mutual dealings and set-off*) of Part 3 (*Creditors' claims*) of this Schedule;
 - (iv) whether or not the claim includes outstanding uncapitalised interest;
 - (v) particulars of how and when the debt was incurred by the Company;
 - (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
 - (vii) details of any reservation of title in respect of goods to which the debt refers; and
 - (viii) the name, address and authority of the person authorising the proof (if other than the creditor himself).
- (2) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.
- (3) The Office-holder may call for any document or other evidence to be produced to the Office-holder if the Office-holder considers it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

6. Costs of proving

- (1) Unless the Court otherwise orders, each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under paragraph 5(3) (*Requirements for proof*) of Part 3 (*Creditors' claims*) of this Schedule.
- (2) In an administration or winding-up, costs incurred by the Office-holder in estimating the value of a debt under paragraph 15 (*Administration and winding-up: estimate of value of debt*) of Part 3 (*Creditors' claims*) of this Schedule are payable out of the assets as an expense of the administration or winding-up.

7. Allowing inspection of proofs

The Office-holder must, so long as proofs delivered to the Office-holder are in the possession of the Office-holder, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has delivered a proof (unless the proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any member or contributory of the Company; and
- (c) any person acting on behalf of any of the above.

8. Transmission of proofs: replacement of Office-holder

- (1) If a new Office-holder (the “**New Office-holder**”) is appointed in place of another (the “**Former Office-holder**”), the Former Office-holder must as soon as reasonably practicable after the appointment of the New Office-holder deliver to the New Office-holder all proofs which the Former Office-holder has received, together with an itemised list of them.
- (2) The New Office-holder must authenticate the list and return it to the Former Office-holder. From then on, all proofs must be sent to and retained by the New Office-holder.

9. Admission and rejection of proofs for dividend

- (1) A proof may be admitted for dividend either for the whole amount claimed by the creditor or for part of that amount.
- (2) If the Office-holder rejects a proof in whole or in part, the Office-holder must prepare a statement of the Office-holder’s reasons for doing so, and deliver or send it as soon as reasonably practicable to the creditor.

10. Appeal against decision on proof

- (1) If a creditor is dissatisfied with the Office-holder’s decision in relation to the creditor’s proof (including any decision on the question of preference), the creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days of the creditor receiving the statement sent under paragraph 9(2) (*Admission and rejection of proofs for dividend*) of Part 3 (*Creditors’ claims*) of this Schedule.
- (2) A member, a contributory or any other creditor may, if dissatisfied with the Office-holder’s decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the Office-holder’s decision.
- (3) The Court will fix a venue for the application to be heard, notice of which must be sent by the applicant to the creditor who delivered the proof in question (if the applicant is not the creditor who delivered the proof in question) and the Office-holder.
- (4) The Office-holder must, on receipt of the notice, file with the Court the relevant proof, together (if appropriate) with a copy of the statement sent under paragraph 9(2) (*Admission and rejection of proofs for dividend*) of Part 3 (*Creditors’ claims*) of this Schedule.
- (5) Where the application is made by a member or a contributory, the Court will not disallow the proof (in whole or in part) unless the member or the contributory shows that there is (or would be but for the amount claimed in the proof), or that it is likely that

there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the Company would be entitled.

- (6) After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the Court to the Office-holder.
- (7) Office-holders are not personally liable for costs incurred by any person in respect of an application under this paragraph unless the Court otherwise orders.

11. Withdrawal or variation of proof

A creditor's proof may at any time, by agreement between the creditor and the Office-holder concerned, be withdrawn or varied as to the amount claimed.

12. Exclusion of proof by the Court

- (1) The Court may exclude a proof or reduce the amount claimed—
 - (a) on the Office-holder's application, where the Office-holder thinks that the proof has been improperly admitted, or ought to be reduced; or
 - (b) on the application of a creditor, a member or a contributory, if the Office-holder declines to interfere in the matter.
- (2) Where the application is made by a member or a contributory, the Court will not exclude a proof or reduce the amount claimed (in whole or in part) unless the member or the contributory shows that there is (or would be but for the amount claimed in the proof), or that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the Company would be entitled.
- (3) Where application is made to the Court under sub-paragraph (1), the Court will fix a venue for the application to be heard, notice of which must be sent by the applicant—
 - (a) in the case of an application by the Office-holder, to the creditor who made the proof; and
 - (b) in the case of an application by a creditor, a member or a contributory, to the Office-holder and to the creditor who made the proof (if the applicant is not the creditor who made the proof).

13. Administration and winding-up by the Court: unsecured debts of insolvent Company to rank equally

- (1) This paragraph applies in an administration and to a winding-up by the Court.
- (2) Unsecured debts (including all or any part of a secured debt which is treated as unsecured in accordance with this Schedule 5) other than Preferential Debts rank equally between themselves and, after the Preferential Debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

14. Administration and winding-up: division of unsold assets

- (1) The Office-holder may—
 - (a) in an administration, with permission of the creditors' committee, or, if there is no creditors' committee, by application to the Court; or

- (b) in a winding-up, without prejudice to provisions of these Regulations about disclaimer, with permission of the Liquidation Committee, or, if there is no Liquidation Committee, by application to the Court,

divide in its existing form amongst the Company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

- (2) The Office-holder must—
 - (a) in the receipts and payments account included in the final progress report under Chapter 10 (*Ending Administration*) of Part 1 (*Administration*) of these Regulations, state the estimated value of the property divided amongst the creditors of the Company during the period to which the report relates; and
 - (b) as a note to the account, provide details of the basis of the valuation.

15. Administration and winding-up: estimate of value of debt

- (1) The Office-holder must estimate the value of a debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and the Office-holder may revise an estimate previously made, if the Office-holder thinks fit by reference to a change of circumstances or to information becoming available to the Office-holder.
- (2) The Office-holder must inform the creditor as to the Office-holder's estimate and any revision of it.
- (3) Where the value of a debt is estimated under this paragraph 15 or by the Court, the amount provable in the case of that debt is that of the estimate for the time being.

16. Negotiable instruments, etc.

Unless otherwise allowed by an Office-holder, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it certified by the creditor or the creditor's authorised representative to be a true copy.

17. Secured creditors

- (1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.
- (2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it was unsecured.

18. Secured creditor: value of security

- (1) A secured creditor may, with the permission of the Court or (except where subparagraph (2) applies) the agreement of the Office-holder, at any time alter the value which that creditor has put upon a security in a proof.
- (2) If a secured creditor—
 - (a) is the applicant for an administration order or is the person who has appointed the administrator and has in the application or the notice of appointment put a value on a security; or

- (b) has voted in an administration or winding-up by the Court in relation to the unsecured balance of the secured creditor's debt,

the secured creditor may alter the value of a security only with the permission of the Court.

19. Secured creditor: surrender for non-disclosure

- (1) If a secured creditor omits to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the Court, on application by the secured creditor, relieves the secured creditor from the effect of this paragraph 19 on the ground that the omission was inadvertent or the result of honest mistake.
- (2) If the Court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

20. Secured creditor: redemption by Office-holder

- (1) The Office-holder may at any time deliver notice to a creditor whose debt is secured that the Office-holder proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.
- (2) The creditor then has 21 days (or such longer period as the Office-holder may allow) in which, if he so wishes, to exercise the right to alter the value of his security (with the permission of the Court, where paragraph 18(2) (*Secured creditor: value of security*) of Part 3 (*Creditors' Claims*) of this Schedule applies but otherwise without the need for either the agreement of the Office-holder or the permission of the Court).
- (3) If the creditor alters the value of his security, the Office-holder may only redeem at the new value.
- (4) If the Office-holder redeems the security, the cost of transferring it is payable out of the assets.
- (5) A secured creditor may at any time, by notice, call on the Office-holder to elect whether the Office-holder will or will not exercise the Office-holder's power to redeem the security at the value then placed on it; and the Office-holder then has three months in which to exercise the power or determine not to exercise it.

21. Secured creditor: test of security's value

- (1) If the Office-holder is dissatisfied with the value which a secured creditor puts on his security (whether in the proof or by way of alteration of value in accordance with paragraph 18 (*Secured creditor: value of security*) of Part 3 (*Creditors' Claims*) of this Schedule), the Office-holder may require any property comprised in the security to be offered for sale.
- (2) The terms of sale will be as agreed, or as the Court may direct; and if the sale is by auction, the Office-holder on behalf of the Company and the creditor (on his own behalf) may appear and bid.
- (3) This paragraph 21 does not apply if the value of the security has been altered with the Court's permission.

22. Realisation of security by creditor

If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the Office-holder)—

- (a) the net amount realised must be substituted for the value previously put by the creditor on the security; and
- (b) that amount must be treated in all respects as an amended valuation made by the creditor.

23. Discounts

There shall in every case be deducted from the claim all trade and other discounts (except any discount for immediate or early settlement) which would have been available but for the Insolvency Proceedings.

24. Administration: mutual dealings and set-off

- (1) This paragraph 24 applies in an administration where the administrator proposes to make a distribution and has delivered a notice under paragraph 31 (*Notice of intention to declare a dividend*) of Part 4 (*Distributions to creditors*) of this Schedule.
- (2) An account must be taken as at the date of the notice referred to in sub-paragraph (1) of what is due from the Company and a creditor to each other in respect of their mutual dealings and the sums due from one party must be set off against the sums due from the other.
- (3) If there is a balance owed to the creditor then only that balance is provable in the administration.
- (4) If there is a balance owed to the Company under sub-paragraph (3) that must be paid to the administrator as part of the assets. However if all or part of the balance owed to the Company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without reduction under paragraph 46 (*Debt payable at future time*) of Part 4 (*Distributions to creditors*) of this Schedule) if and when that debt becomes due and payable.
- (5) In this paragraph 24—
 - (a) “**obligation**” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and
 - (b) “**mutual dealings**” means mutual credits, mutual debts or other mutual dealings between the Company and a creditor proving or claiming to prove for a debt in the administration but does not include any of the following—
 - (i) a debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (aa) an application for an administration order was pending; or
 - (bb) a person had delivered notice of intention to appoint an administrator;
 - (ii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party

where that agreement was entered into at a time when the creditor had notice that—

- (aa) an application for an administration order was pending; or
 - (bb) a person had delivered notice of intention to appoint an administrator;
 - (iii) a debt arising out of an obligation incurred after the Company entered administration;
 - (iv) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the Company entered administration;
 - (v) a debt arising out of an obligation where—
 - (aa) at the time the obligation was incurred, the creditor had notice that a meeting of creditors had been summoned under Section 186 (*Meetings of members and creditors*) of these Regulations or a winding-up petition was pending; and
 - (bb) a winding-up immediately preceded the administration;
 - (vi) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
 - (aa) at a time when the creditor had notice that a meeting of creditors had been summoned under Section 186 (*Meetings of members and creditors*) of these Regulations or that a winding-up petition was pending; and
 - (bb) where a winding-up immediately preceded the administration;
 - (vii) a debt arising out of an obligation incurred during a winding-up which immediately preceded the administration; or
 - (viii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into during a winding-up which immediately preceded the administration.
- (6) A sum must be treated as being due to or from the Company for the purposes of subparagraph (2) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (7) For the purposes of this paragraph 24—
- (a) Paragraph 15 (*Administration and winding-up: estimate of value of debt*) of Part 3 (*Creditors' claims*) of this Schedule applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

- (b) Paragraphs 26 (*Debt in foreign currency*), 27 (*Payments of periodical nature*) and 28 (*Interest*) of Part 3 (*Creditors' claims*) of this Schedule shall apply to sums due to the Company which—
 - (i) are payable in a currency other than dollars;
 - (ii) are of a periodical nature; or
 - (iii) bear interest; and
- (c) paragraph 46 (*Debt payable at future time*) of Part 4 (*Distributions to creditors*) of this Schedule applies to a sum due to or from the Company which is payable in the future.

25. **Winding-up: mutual dealings and set-off**

- (1) This paragraph 25 applies in a winding-up where, before the Company goes into liquidation, there have been mutual dealings between the Company and a creditor of the Company proving for a debt in the liquidation.
- (2) An account must be taken of what is due from the Company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.
- (3) If there is a balance owed to the creditor then only that balance is provable in the winding-up.
- (4) If there is a balance owed to the Company then that must be paid to the liquidator as part of the assets. However if all or part of the balance owed to the Company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without reduction under paragraph 46 (*Debt payable at future time*) of Part 4 (*Distributions to creditors*) of this Schedule) if and when that debt becomes due and payable.
- (5) In this paragraph 25—
 - (a) “**obligation**” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and
 - (b) “**mutual dealings**” means mutual credits, mutual debts or other mutual dealings between the Company and a creditor proving for a debt in the winding-up but does not include any of the following—
 - (i) a debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (aa) a meeting of creditors had been summoned under Section 186 (*Meetings of members and creditors*) of these Regulations; or
 - (bb) a petition for the winding-up of the Company was pending;
 - (ii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—
 - (aa) a meeting of creditors had been summoned under Section 186 (*Meetings of members and creditors*) of these Regulations; or

- (bb) a winding-up petition was pending;
 - (iii) a debt arising out of an obligation where—
 - (aa) at the time the obligation was incurred, the creditor had notice that an administration application was pending or a person had delivered notice of intention to appoint an administrator; and
 - (bb) an administration immediately preceded the winding-up;
 - (iv) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
 - (aa) at a time when the creditor had notice that an administration application was pending or a person had delivered notice of intention to appoint an administrator; and
 - (bb) an administration immediately preceded the winding-up;
 - (v) a debt arising out of an obligation incurred during an administration which immediately preceded the winding-up;
 - (vi) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into during an administration which immediately preceded the winding-up; or
 - (vii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the Company went into liquidation.
- (6) A sum must be treated as being due to or from the Company for the purposes of subparagraph (2) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (7) For the purposes of this paragraph 25—
- (a) Paragraph 15 (*Administration and winding-up: estimate of value of debt*) of Part 3 (*Creditors' claims*) of this Schedule applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
 - (b) Paragraphs 26 (*Debt in foreign currency*), 27 (*Payments of periodical nature*) and 28 (*Interest*) of Part 3 (*Creditors' claims*) of this Schedule shall apply to sums due to the Company which—
 - (i) are payable in a currency other than dollars;
 - (ii) are of a periodical nature; or
 - (iii) bear interest; and

- (c) paragraph 46 (*Debt payable at future time*) of Part 4 (*Distributions to creditors*) of this Schedule applies to a sum due to or from the Company which is payable in the future.

26. Debt in foreign currency

- (1) For the purpose of proving for any debts incurred or payable in a currency other than dollars, the amount of those debts must be converted into dollars at the official exchange rate prevailing on the relevant date.
- (2) “**The official exchange rate**” for the purposes of sub-paragraph (1) is the middle market exchange rate of the Central Bank of the United Arab Emirates at the close of business, as published for the relevant date in question. In the absence of any such published rate, it is such rate as the Court determines.

27. Payments of periodical nature

- (1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.
- (2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

28. Interest

- (1) Where a debt proved in Insolvency Proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.
- (2) In the following circumstances the creditor’s claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.
- (3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.
- (4) If the debt is due otherwise, interest may only be claimed if, before the date on which the Company—
 - (a) entered administration or, if the administration was immediately preceded by a winding-up, the date on which the Company went into liquidation; or
 - (b) went into liquidation or, if the winding-up was immediately preceded by an administration, the date on which the Company entered administration,a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of the payment.
- (5) Interest under sub-paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of these Regulations must be charged at a rate not exceeding that mentioned in sub-paragraph (6).
- (6) The rate of interest to be claimed under sub-paragraphs (3) and (4) is the rate specified in the provisions of the ADGM Court Procedure Rules relating to general rules about costs on the relevant date.

- (7) In an administration or winding-up—
- (a) any surplus remaining after payment of the debts proved must, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;
 - (b) all interest payable under sub-paragraph (7)(a) ranks equally whether or not the debts on which it is payable rank equally; and
 - (c) the rate of interest payable under sub-paragraph (7)(a) is whichever is the greater of the rate specified under sub-paragraph (6) and the rate applicable to the debt apart from the administration or, if applicable, the winding-up.

PART 4

DISTRIBUTIONS TO CREDITORS

29. Application of Part to particular class of creditors

- (1) Subject as follows, this Part 4 applies where the Office-holder makes, or proposes to make, a distribution to any class of creditors other than secured creditors.
- (2) Where in an administration, a distribution is to a particular class of creditors, a reference in this Part 4 to creditors is a reference to that class of creditors only.
- (3) The paragraphs in this Part 4 apply in relation to any distribution made in the Insolvency Proceedings to preferential creditors, with such adaptations as are appropriate considering that such creditors are of a limited class.

30. Intention to declare and distribute dividend

- (1) In an administration and in a winding-up, the Office-holder must deliver notice to the creditors of the Office-holder's intention to declare and distribute a dividend in accordance with paragraph 31 (*Notice of intention to declare a dividend*) of Part 4 (*Distributions to creditors*) of this Schedule.
- (2) In a winding-up, whenever the liquidator has sufficient funds in hand for the purpose the liquidator must, subject to the retention of such sums as may be necessary for the expenses of the winding-up, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved.

31. Notice of intention to declare a dividend

- (1) Where an Office-holder intends to declare a dividend, the Office-holder must deliver a notice of that fact to all creditors who have not proved for their debts (subject to sub-paragraph (4)(a)).
- (2) Before declaring a dividend the Office-holder must by a notice invite the creditors to prove for their debts (unless the Office-holder has previously done so by a notice which has been published in the Abu Dhabi Global Market).
- (3) The notice—
 - (a) must be published in the Abu Dhabi Global Market; and
 - (b) may be advertised in such other manner (if any) as the Office-holder thinks fit.

- (4) Where a dividend is to be declared for preferential creditors—
- (a) a notice under sub-paragraph (1) need only be delivered to creditors whose debts the Office-holder has reason to believe are preferential; and
 - (b) a notice under sub-paragraph (1) need only be delivered if the Office-holder thinks fit.

32. Content of notice

A notice under sub-paragraph 31(1) or 31(3) (*Notice of intention to declare a dividend*) of Part 4 (*Distributions to creditors*) of this Schedule must, in addition to the standard contents—

- (a) specify a date (“**the last date for proving**”) by which proofs may be delivered which must be—
 - (i) the same date for all creditors; and
 - (ii) not less than 21 days from the date of notice;
- (b) state that it is the intention of the Office-holder to make a distribution to creditors within the period of two months from the last date for proving;
- (c) specify whether the proposed dividend is interim or final;
- (d) specify the place to which proofs must be delivered;
- (e) in the case of an administration, state that it is the intention of the administrator to make a distribution to creditors within the period of two months from the last date for proving;
- (f) in the case of a winding-up, state that it is the intention of the Office-holder to declare a dividend within a period of two months from the last date for proving; and
- (g) in the case of a members’ voluntary winding-up, where the distribution is to be a sole or final distribution, state that the dividend may be distributed without regard to the claim of any person in respect of a debt not proved.

33. Postponement or cancellation of dividend

If in the period of two months referred to in paragraph 32(b) (*Content of notice*) of Part 4 (*Distributions to creditors*) of this Schedule—

- (a) the Office-holder has rejected a proof in whole or in part and application is made to the Court for that decision to be reversed or varied; or
- (b) application is made to the Court for the Office-holder’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed,

the Office-holder may postpone or cancel the dividend.

34. Admission or rejection of proofs

- (1) Unless the Office-holder has already dealt with them, the Office-holder must, within five (5) business days of the last date for proving—
 - (a) admit or reject (in whole or in part) proofs delivered to the Office-holder; or

- (b) make such provision in relation to them as the Office-holder thinks fit.
- (2) The Office-holder is not obliged to deal with proofs delivered after the last date for proving, but the Office-holder may do so, if the Office-holder thinks fit.
- (3) In the declaration of a dividend no payment must be made more than once by virtue of the same debt.

35. Declaration of dividend

- (1) If the Office-holder has not had cause to postpone or cancel the dividend in the two month period referred to in paragraphs 32(e) or (f) (*Content of notice*) of Part 4 (*Distributions to creditors*) of this Schedule, the Office-holder must within that period proceed to declare the dividend to one or more classes of creditors of which the Office-holder gave notice.
- (2) Except with the permission of the Court, the Office-holder must not declare a dividend so long as there is pending any application to the Court to reverse or vary a decision of the Office-holder on a proof, or to exclude a proof or to reduce the amount claimed.
- (3) If the Court gives permission under sub-paragraph (2), the Office-holder must make such provision in relation to the proof as the Court directs.

36. Notice of declaration of a dividend

- (1) Where the Office-holder declares a dividend the Office-holder must deliver notice of that fact to, subject to sub-paragraph (3), all creditors who have proved for their debts.
- (2) The notice must include the following particulars relating to the Insolvency Proceedings—
 - (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
 - (b) payments made by the Office-holder in carrying out the Office-holder's functions in relation to the Insolvency Proceedings;
 - (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
 - (d) the total amount to be distributed and the rate of dividend; and
 - (e) whether, and if so when, any further dividend is expected to be declared.
- (3) Where the Office-holder declares a dividend for preferential creditors only, the notice pursuant to sub-paragraph (1) need only be delivered to those preferential creditors who have proved for their debts.

37. Payments of dividends and related matters

- (1) The dividend may be distributed simultaneously with the notice declaring it.
- (2) Payment of dividend may be made by post, or the Office-holder may, with the agreement of the creditor, arrange for it to be paid to the creditor by any other means or in any form, or held for the creditor's collection.
- (3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend must be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

38. Notice of no dividend, or no further dividend

If the Office-holder delivers notice to creditors that the Office-holder is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of the Insolvency Proceedings.

39. Where sole or final dividend

- (1) When the liquidator in a winding-up has realised all the Company's assets or so much of them as can, in the liquidator's opinion, be realised without needlessly prolonging the winding-up, the liquidator must deliver notice as provided for in this Part, either—

- (a) of the intention to declare a final dividend; or
- (b) that no dividend, or further dividend, will be declared.

- (2) The notice must contain all such particulars as are required by this Part and must require claims against the assets to be established by a date set out in the notice.

- (3) Where, in an administration or winding-up, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under paragraph 31 (*Notice of intention to declare a dividend*) of Part 4 (*Distributions to creditors*) of this Schedule, the Office-holder—

- (a) in a winding-up, must defray any outstanding expenses of the winding-up out of the assets;

- (b) in an administration, must—

- (i) pay any outstanding expenses of a winding-up (including any of the items mentioned in Section 226 (*General rule as to priority of expenses*) of these Regulations) or provisional winding-up that immediately preceded the administration;
- (ii) pay any items payable in accordance with the provisions of Section 143 (*Vacation of office: charges and liabilities*) of these Regulations;
- (iii) pay any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the Company, be payable out of the property of which the administrator had custody or control in accordance with the provisions of Section 143 (*Vacation of office: charges and liabilities*) of these Regulations; and

- (c) in a members' voluntary winding-up may, and in every other case must, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

- (4) The Court may, on the application of any person, postpone the date specified in the notice.

40. Administration and winding-up: provisions as to dividends

In an administration or winding-up, in the calculation and distribution of a dividend the Office-holder must make provision for—

- (a) any debts which appear to the Office-holder to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to deliver their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

41. Administration and winding-up: non-payment of dividend

In an administration or winding-up, no action lies against the Office-holder for a dividend; but if the Office-holder refuses to pay a dividend the Court may, if it thinks just, order the Office-holder to pay it and also to pay, out of the Office-holder's own money—

- (a) interest on the dividend, at the official interest rate, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

42. Supplementary provisions as to dividends

- (1) A creditor is not entitled to disturb the payment of any dividend or making of any distribution because—
 - (a) the amount claimed in the creditor's proof is increased after payment of the dividend or making of the distribution;
 - (b) in an administration or creditors' voluntary winding-up or compulsory winding-up the creditor did not prove for a debt before the declaration of the dividend; or
 - (c) in a members' voluntary winding-up, the creditor did not prove for a debt before the last date for proving or increases the claim in proof after that date.
- (2) However the creditor is entitled to be paid or receive, out of any money for the time being available for the payment of any further dividend or making of any further distribution, any dividend or distribution which he has failed to receive.
- (3) Any dividend or dividends payable under this paragraph must be paid or distribution made before that money is applied to the payment of any further dividend or making of any further distribution.
- (4) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the Office-holder, for the credit of the Insolvency Proceedings, any amount overpaid by way of dividend.

43. Secured creditors

- (1) The following applies where a creditor alters the value of a security after a dividend has been declared.
- (2) If the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the Office-holder, for the credit of the

administration or the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

- (3) If the alteration increases the creditor's unsecured claim, the creditor is entitled to receive from the Office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.
- (4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

44. Disqualification from dividend

If a creditor contravenes any provision of these Regulations relating to the valuation of securities, the Court may, on the application of the Office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

45. Assignment of right to dividend

- (1) If a person entitled to a dividend ("**the entitled person**") delivers notice to the Office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the Office-holder must pay the dividend to that other person accordingly.
- (2) A notice delivered under this paragraph must specify the name and address of the person to whom payment is to be made.

46. Debt payable at future time

- (1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, the creditor is entitled to dividend equally with other creditors, but subject as follows.
- (2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in respect of the creditor's admitted proof) must be reduced by applying the following formula—

$$\frac{x}{1.05^n}$$

where—

"**X**" is the value of the admitted proof; and

"**n**" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

47. Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors are to prove their debts or claims or else to be excluded from the benefit of any distribution made before those debts are proved provided that the Court is satisfied that all necessary steps have been taken to bring the Insolvency Proceedings to the attention of creditors.

SCHEDULE 6

MEETINGS AND CORRESPONDENCE

PART 1

APPLICATION OF SCHEDULE

1. Types of proceeding to which Schedule applies

- (1) This Schedule applies to making decisions, except where these Regulations provide otherwise—
 - (a) in administration;
 - (b) where a Deed of Company Arrangement is applicable;
 - (c) in administrative receivership;
 - (d) in a creditors' voluntary winding-up; and
 - (e) in a winding-up by the Court.
- (2) This Schedule also applies to decision making and meetings under Section 183 (*Effect of Company's insolvency*).
- (3) These Regulations determine which procedures may be used in a particular circumstance.

PART 2

RESOLUTION BY CORRESPONDENCE

2. Application of Part

- (1) This Part applies where these Regulations allow an Office-holder to invite the creditors or contributories to pass a resolution by correspondence.
- (2) This Part does not apply to a resolution which these Regulations require to be passed at a meeting.
- (3) A reference in these Regulations to a resolution passed at a meeting of creditors or contributories includes a reference to a resolution passed in accordance with this Part.

3. Resolution by correspondence

- (1) For a resolution to be passed by correspondence the convener must deliver a notice to every creditor or (as the case may be) contributory who would be entitled to notice of a meeting at which the resolution could be passed.
- (2) The notice must in addition to the standard contents—
 - (a) set out the resolutions to be voted on;
 - (b) state the deadline for voting;
 - (c) state that in order to be counted a vote by a creditor must be accompanied by written details of the creditor's claim (unless previously supplied) failing which the vote will be disregarded;
 - (d) provide a space for the creditor or contributory to authenticate the vote;

- (e) provide a space for a person authenticating on behalf of a creditor to state the capacity in which the vote is authenticated; and
 - (f) be authenticated and dated by the Office-holder or Appointed Person.
- (3) The notice must contain a deadline for voting, set at the discretion of the Office-holder or Appointed Person, but which must be not less than 14 days from the date of delivery of the notice.
- (4) In order to be counted, votes must—
 - (a) be received by the convener by 12.00 noon on the deadline; and
 - (b) in the case of a vote cast by a creditor, be accompanied by a statement of entitlement to vote on the resolution unless one has previously been delivered to the Office-holder or Appointed Person.
- (5) In order to be counted, a vote must be accompanied by a statement of entitlement.
- (6) A statement of entitlement is a statement of the details or a proof as required by paragraph 27(1)(a) (*Creditors' voting rights at meetings*) of Part 8 (*Creditors' Voting Rights and Majorities*) of this Schedule.
- (7) A vote must be disregarded if—
 - (a) a statement of entitlement neither accompanies the vote nor has previously been delivered to the convener; or
 - (b) the Office-holder or Appointed Person decides, in the application of Part 8 (*Creditors' Voting Rights and Majorities*) and Part 9 (*Contributories' Voting Rights and Majorities*) of this Schedule, that the creditor is not entitled to cast the vote.
- (8) For the resolution to be passed, the Office-holder or Appointed Person must receive at least one valid vote in favour by the closing date.
- (9) Creditors whose debts amount to at least ten (10)% of the total debts of the Company may, within five business days from the date of delivery of the notice, require the Office-holder to call a meeting of creditors to consider the resolution.
- (10) Contributories representing at least ten (10)% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within five business days from the date of delivery of the notice, require the Office-holder to call a meeting of contributories to consider the resolution.
- (11) If no valid vote is received by the closing date specified, the Office-holder must call a meeting of creditors or contributories, at which the resolution could be passed.
- (12) A reference in these Regulations to anything done or required to be done at, or in connection with, or in consequence of, a meeting of creditors or contributories extends to anything done in the course of correspondence in accordance with this paragraph.

PART 3

SUMMONING OF MEETINGS (GENERAL)

4. Venue

- (1) The convener must have regard to the convenience of those invited to attend when fixing the venue for a meeting (including the resumption of an adjourned meeting).

- (2) The convenor shall summon a meeting to take place during the normal business hours of the Court (as determined from time to time by the rules and regulations relating to the Court) on a business day, unless the Court otherwise directs.

5. Notice of meetings: content and accompanying documents

- (1) Notices summoning a meeting must specify the purpose of and venue for the meeting and—
- (a) in case of a meeting of creditors, state that claims, proofs (if not already delivered) and proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting;
 - (b) in the case of a meeting of contributories, state that proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting in order for contributories to be entitled to vote at the meeting.
- (2) Blank proxies complying with paragraph 37 (*Blank proxies*) of Part 11 (*Proxies and corporate representation*) of this Schedule must be delivered with every notice summoning a meeting.
- (3) This paragraph does not apply if the Court orders under paragraph 7 (*Notice of meeting by advertisement only*) of Part 3 (*Summoning of meetings (general)*) of this Schedule that notice of a meeting be given by advertisement only.

6. Notice of meetings: when and to whom delivered

- (1) Notices summoning a meeting must be delivered at least 14 days before the day fixed for the meeting unless this paragraph provides to the contrary.
- (2) Notices must be delivered in accordance with the following table.

Proceedings	Meeting	Persons to whom notice must be given	Minimum notice required
administration	meeting of creditors	all the creditors who had claims against the Company at the date when the company entered administration (except for those who have subsequently been paid in full)	14 days
Deed of Company Arrangement	meeting of creditors	all the creditors	14 days
administrative receivership	meeting of creditors under Section 171(2) (<i>Meeting of creditors</i>)	all the creditors who had claims against the Company at the date when the receiver was appointed	14 days

Proceedings	Meeting	Persons to whom notice must be given	Minimum notice required
creditors' voluntary winding-up or a compulsory winding-up by the Court	meeting of creditors	all the creditors	14 days
creditors' voluntary winding-up or a compulsory winding-up by the Court	meeting of creditors to consider whether a replacement should be appointed after the liquidator's resignation	all the creditors	28 days
compulsory winding-up by the Court	meeting of creditors to consider whether to remove the liquidator	all the creditors	14 days
creditors' voluntary winding-up or a compulsory winding-up by the Court	meeting of contributories	every person appearing (by the company's records or otherwise) to be a contributory	14 days

- (3) This paragraph does not apply to meetings under Sections 183 (Effect of Company's insolvency) or 186 (Meetings of members and creditors) or where the Court orders under paragraph 7 (*Notice of meeting by advertisement only*) of Part 3 (*Summoning of meetings (general)*) of this Schedule that notice of a meeting be given by advertisement only.

7. Notice of meeting by advertisement only

- (1) The Court may order that notice of a meeting be given by advertisement only and not by individual notice to the persons concerned.
- (2) In considering whether to make such an order, the Court will have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, members and contributories or any particular class of them.
- (3) In addition to the standard contents, the advertisement must state—
- (a) the venue for the meeting;
 - (b) that claims, proofs (if not already delivered) and proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting; and
 - (c) the date of the Court's order that notice of the meeting be given by advertisement only.

8. Publication of notice of meetings (except under Sections 183 and 186)

- (1) The convener of a meeting (other than a meeting under Sections 183 (*Effect of Company's insolvency*) or 186 (*Meetings of members and creditors*)) must publish a notice of the meeting on the Registrar's website or in an English language newspaper

distributed in the United Arab Emirates and available in the Abu Dhabi Global Market stating—

- (a) the standard contents;
 - (b) that a meeting of creditors or contributories or a Company meeting is to take place;
 - (c) the venue fixed for the meeting;
 - (d) the purpose of the meeting; and
 - (e) the time and date by which, and place at which, those attending must deliver proxies and (in the case of a meeting of creditors) claims or proofs (if not already delivered) in order to be entitled to vote.
- (2) In a creditors' voluntary winding-up or a compulsory winding-up the notice must also state—
- (a) who summoned the meeting; and
 - (b) if the meeting was summoned at the request of a creditor, the fact that it was so summoned and the Section of these Regulations under which it was summoned.
- (3) The notice must be published before or as soon as reasonably practicable after notice is delivered to those attending.
- (4) Information published under this paragraph may also be published in such other manner as the convener thinks fit.

9. Publication of notice of meetings under Sections 183 and 186

- (1) A notice under Section 183 (*Effect of Company's insolvency*) or Section 186 (*Meetings of members and creditors*) must contain, in addition to the standard contents, a statement that the convenor shall furnish free of charge such information concerning the affairs of the Company as they may reasonably require and, in the case of Section 186 (*Meetings of members and creditors*), the place where a list of the names and addresses of the Company's creditors will be available for inspection free of charge.
- (2) The notice must also state the purpose of, and venue fixed for, the meeting, and the time and date by which, and place at which, those attending must deliver proxies and claims or proofs (if not already delivered) in order to be entitled to vote.

10. Notice to Company officers and other people

- (1) In an administration, notice to attend an initial creditors' meeting must be delivered to every present or former officer of the Company whose presence the administrator thinks is required.
- (2) These notices must be delivered at the same time that notice is delivered to creditors in compliance with Section 61(1) (*Requirement for initial creditors' meeting*).
- (3) In a creditors' voluntary winding-up or a winding-up by the Court the convener must deliver a notice at least 14 days before the date fixed for the meeting to such of the persons referred to in Section 255(2)(a) to (e) (*Duty to co-operate with Office-holder*) as the convener thinks should be told of, or attend, the meeting.

- (4) Every person who receives a notice under sub-paragraph (1), and every person who receives a notice under sub-paragraph (3) which states that that person is required to attend the meeting, must attend.

11. Non-receipt of notice of meeting

Where a meeting is summoned by notice in accordance with these Regulations, the meeting is presumed to have been duly summoned and held, even if not everyone to whom the notice is to be delivered has received it.

PART 4

MEETINGS IN PARTICULAR PROCEEDINGS

12. Creditors' meetings in administration: notice of extension of time

Where the Court orders an extension to the period set out in Section 61(2)(b) (*Requirement for initial creditors' meeting*), the administrator must deliver a notice of the extension to each person to whom the administrator is required to deliver a notice by Section 56(5) (*Administrator's proposals*).

PART 5

REQUISITIONED MEETINGS

13. Requisition of meetings

- (1) In this Part, "**requisitioned meeting**" means a meeting requested under Section 61(7) (*Requirement for initial creditors' meeting*), Section 71(1) (*Further creditors' meetings*) or Section 90(1)(b) (*Meeting of creditors to consider variation or termination*).
- (2) A request for a meeting under Section 61(7) (*Requirement for initial creditors' meeting*) must be delivered within eight (8) business days of the date on which the administrator's statement of proposals is delivered.
- (3) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—
- (a) either—
- (i) a statement of the requesting creditor's claim or contributory's value;
- (ii) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values; and
- (iii) confirmation of concurrence from each creditor or contributory concurring; or
- (b) a statement of the requesting creditor's debt or contributory's value and that that alone is sufficient without the concurrence of other creditors or contributories.
- (4) In the preceding sub-paragraph, a contributory's value is the amount which the contributory may vote at any meeting.
- (5) A meeting must be summoned for the removal of the liquidator, other than a liquidator appointed by the Court under Section 197(2) (*Court's power to control proceedings*), if twenty-five (25)% in value of the Company's creditors, excluding those who are Connected Persons of the Company, request it.

- (6) Where a meeting under sub-paragraph (5) or any meeting for the replacement of a liquidator appointed under Section 197(2) (*Court's power to control proceedings*) is to be held, or is proposed to be summoned, the Court may, on the application of any creditor, give directions as to the mode of summoning it, the delivery of blank proxies and of proxies, the conduct of the meeting, and any other matter which appears to the Court to require regulation or control.
- (7) A requisitioned meeting must be held within 28 days of the date on which one of the events specified in paragraph 14(2) (*Expenses of requisitioned meetings*) of Part 5 (*Requisitioned meetings*) of this Schedule first occurs.

14. Expenses of requisitioned meetings

- (1) The convener must, not later than twenty-one (21) days of receipt of a request for a requisitioned meeting, inform the requesting creditor or contributory of the sum to be deposited as security for payment of the expenses of summoning and holding the meeting.
- (2) The convener is not obliged to summon a requisitioned meeting until either—
 - (a) the convener has received the required sum; or
 - (b) the period of twenty-one (21) days has expired without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.
- (3) The expenses of a requisitioned meeting must be paid out of the deposit (if any) unless—
 - (a) the meeting resolves that they are to be payable out of the assets of the Company as an expense of the administration or winding-up, as the case may be; and
 - (b) in the case of a meeting of contributories, the creditors are first paid in full, with interest.
- (4) Where the meeting does not so resolve, the expenses must be paid by the requesting creditor or contributory to the extent that the deposit (if any) is not sufficient.
- (5) To the extent that the deposit (if any) is not required for payment of the expenses, it must be repaid to the requesting creditor or contributory.

PART 6

CONSTITUTION OF MEETINGS

15. Quorum at meeting of creditors or contributories

- (1) A meeting of creditors or contributories is not competent to act unless a quorum is in attendance.
- (2) A quorum is—
 - (a) in the case of a meeting of creditors, at least one creditor entitled to vote; and
 - (b) in the case of a meeting of contributories, at least two contributories entitled to vote, or all the contributories, if their number does not exceed two.

- (3) A meeting of creditors or contributories must not commence until at least the expiry of 15 minutes after the time appointed for its commencement where—
- (a) the provisions of this paragraph as to a quorum attending are satisfied by the attendance of the chairman alone, or one other person in addition to the chairman; and
 - (b) the chairman is aware, by virtue of claims or proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote.
- (4) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chairman may adjourn the meeting to such time and place as the chairman may appoint.

16. Chair at meetings

The chairman of a meeting of creditors or contributories or a meeting to remove the liquidator in a creditors' voluntary winding-up or a compulsory winding-up must be the convener or an Appointed Person.

17. Attendance by other persons

The chairman of a meeting may—

- (a) admit any person who has given reasonable notice of wishing to attend;
- (b) decide what intervention, if any, may be made at—
 - (i) a meeting of creditors by any person attending who is not a creditor; or
 - (ii) a meeting of contributories by any person attending who is not a contributory; and
- (c) decide what questions may be put to any person attending who is referred to in Section 255(2)(a) to (e) (*Duty to co-operate with Office-holder*).

18. Remote attendance at meetings

- (1) This paragraph applies to—
- (a) any meeting of the creditors of a Company summoned under these Regulations; or
 - (b) any meeting of the members or contributories of a Company summoned by the Office-holder under these Regulations, 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**") considers it appropriate, 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 sub-paragraph (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 paragraph—
- (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 that 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 sub-paragraph (2) shall make whatever arrangements the convener considers appropriate to—
 - (a) enable those attending the meeting to exercise their rights to speak or vote; and
 - (b) 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 these Regulations 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 or vote.
- (7) In making the arrangements referred to in sub-paragraph (5) and in forming the opinion referred to in sub-paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories 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 these Regulations 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 ten (10) % in value of the creditors or contributories; or
 - (ii) in the case of a meeting of members, by members representing not less than ten (10)% 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 paragraph, “**the Office-holder**”, in relation to a Company, means its liquidator, provisional liquidator, administrator (including for this purpose an administrator of a Deed of Company Arrangement relating to the Company) or administrative receiver.

19. Creditor request for remote attendance at meetings

- (1) This paragraph applies where—
 - (a) the notice of the meeting does not specify a place for the meeting;
 - (b) the convenor is requested in accordance with the Regulations 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 ten (10)% in value of the creditors or contributories; or
 - (ii) in the case of a meeting of members, by members representing not less than ten (10) % of the total voting rights of all the members having at the date of the request a right to vote at the meeting.
- (2) The request must be accompanied by—
 - (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts;
 - (b) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting);
 - (c) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
 - (d) from each person concurring, confirmation of that person's concurrence.
- (3) The request must be delivered to the convener within seven (7) business days of the date on which the convener delivered the notice of the meeting in question.
- (4) Where the convener considers that the request has been properly made in accordance with these Regulations, the convener must—
 - (a) deliver notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place; and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
 - (c) deliver at least 14 days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.
- (5) Where the convener has specified a place for the meeting in response to a request to which this paragraph applies, the chairman of the meeting must attend the meeting by being present in person at that place.
- (6) Paragraph 14 (*Expenses of requisitioned meetings*) of Part 5 (*Requisitioned meetings*) of this Schedule does not apply to the summoning and holding of a meeting at a place specified in accordance with paragraph 18 (*Remote attendance at meetings*) of Part 6 (*Constitution of meetings*) of this Schedule.

PART 7

ADJOURNMENT AND SUSPENSION

20. Adjournment by chairman

- (1) The chairman may (and must if it is so resolved) adjourn for not more than 14 days—
 - (a) any meeting of creditors in administration or where there is a Deed of Company Arrangement, but subject to the direction of the Court;
 - (b) any meeting in a creditors' voluntary winding up or a compulsory winding-up where the adjournment is with a view to obtaining the attendance of any person referred to in Section 255(2)(a) to (e) (*Duty to co-operate with Office-holder*) who is not in attendance; and
 - (c) any other meeting in a creditors' voluntary winding-up or a compulsory winding-up, but subject to the direction of the Court and to paragraph 22 (*Adjournment of meetings to remove a liquidator*) of Part 7 (*Adjournment and suspension*) of this Schedule.
- (2) Further adjournment under this Schedule must not be to a day later than 14 days after the date on which the meeting was originally held (subject to any direction by the Court).
- (3) If a meeting is adjourned, the chairman must, as soon as reasonably practicable, unless for any reason the chairman thinks it unnecessary or impracticable, deliver notice of the adjournment in an insolvent or compulsory winding-up, to any such person referred to in Section 255(2)(a) to (e) (*Duty to co-operate with Office-holder*) who did not attend the meeting as the chairman thinks fit.

21. Administrator's proposals: lack of majority at initial creditors meeting

If at an initial creditors' meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and must if a resolution is passed to that effect, adjourn the meeting for not more than 14 days after the date on which the initial creditors' meeting was held (subject to any direction by the Court).

22. Adjournment of meetings to remove a liquidator

If the chairman of a meeting to remove the liquidator in a creditors' voluntary winding-up or a compulsory winding-up is the liquidator or the liquidator's nominee and a resolution has been proposed for the liquidator's removal, the chairman must not adjourn the meeting without the consent of at least one-half (in value) of the creditors attending and entitled to vote.

23. Adjournment in absence of chairman

- (1) This paragraph applies to meetings in an administration where there is a Deed of Company Arrangement, a creditors' voluntary winding-up or a compulsory winding-up.
- (2) If no one attends to act as chairman within 30 minutes of the time fixed for the meeting to start, then the meeting is adjourned to the same time and place the following week or, if that is not a business day, to the business day immediately following.
- (3) If on the second adjournment no one attends to act as chairman within 30 minutes then the meeting comes to an end.

24. Proofs and proxies in adjournment

Where a meeting in an administration, a creditors' voluntary winding-up or compulsory winding-up or where there is a Deed of Company Arrangement is adjourned, claims, proofs and proxies may be used if delivered at any time up to 12.00 noon on the business day immediately before resumption of the adjourned meeting.

25. Suspension

In the course of a meeting, the chairman may, without an adjournment, declare it suspended for one or more periods not exceeding one (1) hour in total.

PART 8

CREDITORS' VOTING RIGHTS AND MAJORITIES

26. Creditors' voting rights by correspondence

- (1) A creditor is entitled to vote on a resolution by correspondence only if—
 - (a) there has been delivered to the convener—
 - (i) in an administration or administrative receivership or under a Deed of Company Arrangement, details; or
 - (ii) in a creditors' voluntary winding-up or a compulsory winding-up, a proof, of the debt claimed in accordance with paragraph (2), including any calculation for the purposes of paragraphs 28 (*Calculation of voting rights*) or 29 (*Calculation of voting rights: special cases*) of Part 8 (*Creditors' voting rights and majorities*) of this Schedule;
 - (b) the details were or proof was delivered to the convener not later than 12.00 noon on the day specified as the deadline for voting; and
 - (c) the claim has been admitted for the purposes of entitlement to vote.
- (2) A debt is claimed in accordance with this paragraph if it is claimed as due from the Company to the person seeking to be entitled to vote.
- (3) The details delivered to the convener in an administrative receivership must state—
 - (a) the creditors' name and address, and, if a Company, its Company registration number;
 - (b) the total amount of the claim as at the date of the appointment of the receiver, less all trade and other discounts available to the Company or which would have been available to the Company but for the appointment, except for any discount for immediate or early settlement;
 - (c) whether or not that amount includes outstanding uncapitalised interest;
 - (d) particulars of how and when the debt was incurred by the Company;
 - (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
 - (f) details of any reservation of title in relation to goods to which the debt refers; and

- (g) the name, address and authority of the person making out the claim (if other than the creditor).
- (4) The convener may call for any document or other evidence to be produced if the convener thinks it necessary for the purpose of substantiating the whole or any part of a claim.

27. Creditors' voting rights at meetings

- (1) A creditor is entitled to vote at a meeting of creditors only if—
 - (a) there has been delivered to the convener—
 - (i) in an administration or administrative receivership or under a Deed of Company Arrangement, details; or
 - (ii) in a creditors' voluntary winding-up or a compulsory winding-up, a proof, of the debt claimed in accordance with sub-paragraph (2), including any calculation for the purposes of paragraphs 28 (*Calculation of voting rights*) or 29 (*Calculation of voting rights: special cases*) of Part 8 (*Creditors' voting rights and majorities*) of this Schedule; and
 - (b) the details were or proof was delivered to the convener—
 - (i) not later than 12.00 noon on the business day before the day fixed for the meeting; or
 - (ii) later than that time but the chairman of the meeting is satisfied that that was due to circumstances beyond that person's control; and
 - (c) the claim has been admitted for the purposes of entitlement to vote; and
 - (d) there has been delivered to the convener any proxy intended to be used on behalf of that person.
- (2) A debt is claimed in accordance with this paragraph if it is claimed as due from the Company to the person seeking to be entitled to vote.
- (3) The details delivered to the convener in an administrative receivership must state—
 - (a) the creditor's name and address, and, if a Company, its Company registration number;
 - (b) the total amount of the claim (including any applicable tax) as at the date of the appointment of the receiver, less all trade and other discounts available to the Company, or which would have been available to the Company but for the appointment, except for any discount for immediate or early settlement;
 - (c) whether or not that amount includes outstanding uncapitalised interest;
 - (d) particulars of how and when the debt was incurred by the Company;
 - (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
 - (f) details of any reservation of title in relation to goods to which the debt refers; and
 - (g) the name, address and authority of the person making out the claim (if other than the creditor).

- (4) The chairman of a meeting of creditors may call for any document or other evidence to be produced if the chairman thinks it necessary for the purpose of substantiating the whole or any part of a claim.

28. Calculation of voting rights

- (1) Votes are calculated according to the amount of each creditor's claim—
- (a) in an administration, as at the date on which the Company entered administration, less—
 - (i) any payments that have been made to the creditor after that date in respect of the claim; and
 - (ii) any adjustment by way of set-off in accordance with paragraph 24 (*Administration: mutual dealings and set-off*) of Part 3 (*Creditors' claims*) of Schedule 5 (*Proofs and distribution*)—
 - (aa) as if that paragraph were applied on the date on which the votes are counted if notice of declaration of a dividend has not been delivered under paragraph 36 (*Notice of declaration of a dividend*) of Part 4 (*Distributions to creditors*) of Schedule 5 (*Proofs and distribution*); or
 - (bb) which has actually been made in calculating the dividend to be paid to the creditor if notice of declaration of a dividend has been delivered under paragraph 36 (*Notice of declaration of a dividend*) of Part 4 (*Distributions to creditors*) of Schedule 5 (*Proofs and distribution*);
 - (b) in an administrative receivership, as at the date of the appointment of the receiver, less any payments that have been made to the creditor after that date in respect of the claim;
 - (c) in a creditors' voluntary winding-up or a compulsory winding-up, as set out in the creditor's proof to the extent that it has been admitted; or
 - (d) under a Deed of Company Arrangement, as at the date of the relevant meeting or in the case of a resolution by correspondence, as at the deadline specified for voting.
- (2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chairman or the Office-holder or Appointed Person, as the case may be, decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.
- (3) A creditor may not vote in respect of any claim or part of a claim where the claim or part is secured, except where the vote is cast—
- (a) in an administration, in respect of—
 - (i) the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor; or
 - (ii) the full value of the debt without deduction of the value of the security in a case where the administrator has made a statement under Section 61(6) (*Requirement for initial creditors' meeting*) and an initial creditors' meeting has been requisitioned under Section 61(7) (*Requirement for initial creditors' meeting*); or

- (b) in an administrative receivership, a creditors' voluntary winding-up or a compulsory winding-up, in respect of the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor; or
 - (c) under a Deed of Company Arrangement where it is so permitted.
- (4) No vote may be cast by virtue of a claim more than once on any resolution.
- (5) Sub-paragraph (4) does not prevent a creditor from—
 - (a) voting in respect of less than the full value of an entitlement to vote; or
 - (b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

29. Calculation of voting rights: special cases

- (1) In an administration, a creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the Company on the date on which the Company entered administration.
- (2) In calculating the amount of any debt for the purpose of sub-paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—
 - (a) the making of an administration application;
 - (b) a notice of intention to appoint an administrator or any matter arising as a consequence of the notice; or
 - (c) the Company entering administration.
- (3) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—
 - (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the Company, as a security in his hands; and
 - (b) to estimate the value of the security and, for the purpose of his entitlement to vote (but not for dividend), to deduct it from his claim.

30. Procedure for admitting creditors' claims for voting at meetings

- (1) At a meeting of creditors, the chairman must ascertain entitlement to vote and admit or reject claims accordingly.
- (2) The chairman may admit or reject a claim in whole or in part.
- (3) If the chairman is in any doubt whether a claim should be admitted or rejected, the chairman must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

31. Procedure for admitting creditors' claims for voting by correspondence

- (1) Where a matter is being voted on by correspondence the Office-holder or Appointed Person must ascertain entitlement to vote and admit or reject claims accordingly.
- (2) The Office-holder or Appointed Person may admit or reject a claim in whole or in part.

- (3) If the Office-holder or Appointed Person is in any doubt whether a claim should be admitted or rejected, the Office-holder or Appointed Person must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

32. Requisite majorities

- (1) Subject to sub-paragraph (2) in the case of a creditors' meeting in administration proceedings or a meeting of creditors under a Deed of Company Arrangement, a resolution is passed by creditors when a majority (in value) of those voting by correspondence or attending and voting at a meeting have voted in favour of it.
- (2) In the case of a creditors' meeting in administration proceedings or a meeting of creditors under a Deed of Company Arrangement, a resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent who are not, to the best of the chairman's belief, Connected Persons of the Company.

33. Appeals against decisions under this Part

- (1) The decision of the Office-holder or Appointed Person (in respect of matters considered by correspondence) or the chairman's decisions (in respect of matters considered at meetings) under this Part are subject to appeal to the Court by any creditor or by a contributory.
- (2) If the chairman's decision or the decision of the Office-holder or Appointed Person is reversed or varied, or votes are declared invalid, the Court may order another meeting to be summoned or make such order as it thinks just.
- (3) An appeal under this paragraph may not be made later than 21 days after the date of the meeting or relevant deadline for voting, as the case may be.
- (4) The chairman is not personally liable for costs incurred by any person in relation to an appeal under this paragraph unless the Court makes an order to that effect.
- (5) The Court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

PART 9

CONTRIBUTORIES' VOTING RIGHTS AND MAJORITIES

34. Voting rights and requisite majorities at contributories' meetings

At a meeting of contributories—

- (a) voting rights are as at a general meeting of the Company, subject to any provision of the Articles affecting entitlement to vote, either generally or at a time when the Company is in liquidation; and
- (b) a resolution is passed if more than one half of the votes cast by contributories attending are in favour.

PART 10

RECORDS, RETURNS AND REPORTS

35. Minutes

- (1) The chairman of any meeting under these Regulations in an administration, under a Deed of Company Arrangement, administrative receivership or a creditors' voluntary winding-up or a compulsory winding-up, other than a Company meeting (for which see paragraph 47 (*Company meetings (general)*) of Part 12 (*Company meetings*) of this Schedule), must cause minutes of its proceedings to be kept.
- (2) The minutes must be authenticated by the chairman, and be retained by the chairman as part of the records of the proceedings in question.
- (3) The minutes must include—
 - (a) a list of the names of creditors who attended a meeting of creditors or a meeting of both members and creditors and their claims;
 - (b) a list of the names of contributories who attended a meeting of contributories;
 - (c) if a creditors' committee has been established, the names and addresses of those elected to be members of the committee; and
 - (d) a record of every resolution passed.

PART 11

PROXIES AND CORPORATE REPRESENTATION

36. Appointment of proxy-holders

- (1) A proxy-holder must be an individual aged 18 or over.
- (2) A proxy may be given for use only at a particular meeting.
- (3) A principal may appoint more than one person to be proxy-holder at a particular meeting; but if so—
 - (a) their appointment is as alternates;
 - (b) the order in which they are authorised to be proxy-holder must be specified in the appointment; and
 - (c) only one of them may act as proxy-holder for that principal at the meeting.
- (4) A proxy shall be given to the chairman of the meeting in question and a person given a proxy under this paragraph may not refuse it.

37. Blank proxies

- (1) A blank proxy is a document which—
 - (a) when completed by the insertion or addition of the details specified in sub-paragraph (b)(iii) will be a proxy capable of use in accordance with these Regulations; and

- (b) contains a statement to the effect that a creditor, member or contributory to be named in the document when completed—
 - (i) appoints a proxy-holder, to be named in the document when completed, as the proxy of the creditor, member or contributory at a meeting to be specified in the document when completed (which may or may not include the resumption of an adjourned meeting);
 - (ii) directs or authorises the proxy-holder to propose or vote as, when the document is completed, will be provided in the proxy; and
 - (iii) makes provision for the insertion or addition of—
 - (aa) the name and address of the creditor, member or contributory;
 - (bb) either the name of the proxy-holder or a statement that the proxy is given to the chairman of the meeting;
 - (cc) if more than one proxy-holder is appointed, the order in which they are authorised;
 - (dd) a statement of the extent to which the proxy-holder is directed to vote in a particular way or to abstain; and
 - (ee) the relationship of the person authenticating the proxy to the creditor, member or contributory, and the authority of that person, where the authentication is by someone authorised by the creditor, member or contributory.
- (2) Blank proxies delivered under these Regulations must not have inserted in them the name or description of any person as proxy.
- (3) The convener of a meeting may require a proxy used at a meeting to be the same as or substantially similar to the blank proxy delivered for that meeting; but if so, the information required to be inserted on the blank proxy must be limited to the things listed in sub-paragraph (1)(b)(iii).
- (4) A proxy must be authenticated and dated by the creditor, member or contributory, or by some person authorised by the creditor, member or contributory.
- (5) If a proxy is authenticated by a person other than the principal, the nature of that person's authority must be stated.

38. Use of proxies

- (1) An authenticated proxy given for a meeting must be delivered to the chairman before the meeting begins.
- (2) A proxy given for a meeting may be used at the resumption of that meeting after an adjournment, and the authenticated proxy need not be delivered to the chairman at the resumption (whether the chairman is the same person or not).
- (3) But if a different proxy is given for use at resumption of a meeting after an adjournment, the authenticated proxy must be delivered to the chairman before the commencement of the resumed meeting.
- (4) Where the Office-holder or Appointed Person holds proxies for use as chairman of a meeting but another person acts as chairman, that other person may use the proxies as if proxy-holder.

- (5) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the Office-holder, the proxy-holder may, unless the proxy states otherwise, vote for or against (as the proxy-holder thinks fit) any resolution for the nomination or appointment of that person jointly with another or others.
- (6) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy the proxy-holder would be entitled to vote.
- (7) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, prohibit the proxy-holder from voting at the discretion of the proxy-holder on resolutions put to the meeting which are not dealt with in the proxy.

39. Retention of proxies

The chairman of a meeting must—

- (a) retain the proxies used for voting at the meeting where the chairman is also the Office-holder; or
- (b) deliver them as soon as reasonably practicable after the meeting to the Office-holder.

40. Right of inspection

- (1) The Office-holder or Appointed Person must allow proxies, so long as they remain in the Office-holder's or Appointed Person's hands, to be inspected at all reasonable times on any business day by—
 - (a) the creditors, in the case of proxies used at a meeting of creditors;
 - (b) the members or contributories, in the case of proxies used at a meeting of the Company or of its contributories; and
 - (c) the Directors,
 as the case may be.
- (2) The reference in sub-paragraph (1) to the creditors is—
 - (a) in the case of a creditors' voluntary winding-up or a compulsory winding-up, to those creditors who have proved for their debts; and
 - (b) in any other case, to persons who have delivered in writing claims to be creditors of the Company;
 but in neither case does it include a person whose proof or claim has been wholly rejected for purposes of voting, dividend or otherwise.
- (3) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including proofs) delivered, in accordance with directions contained in any notice convening the meeting, to the chairman or to any other person by a creditor, member or contributory for the purpose of the meeting.
- (4) This paragraph is subject to Sections Part 1Chapter 753(6) (*Limited disclosure*) and 58(7) (*Limited disclosure of statement of proposals*).

41. Proxy-holder with financial interest

- (1) A proxy-holder (including the chairman of the meeting using a proxy under paragraph 38(4) (*Use of proxies*) of Part 11 (*Proxies and corporate representation*) of this Schedule) must not vote in favour of any resolution which would—

- (a) directly or indirectly place the proxy-holder or any associate in a position to receive any remuneration out of the insolvent estate; or
- (b) fix or change the basis of remuneration receivable by the proxy-holder or any associate out of the insolvent estate,

unless the proxy specifically directs the proxy-holder to vote in that way.

- (2) For the purpose of sub-paragraph (1), the proxy-holder is an associate of the chairman where the chairman uses a proxy under paragraph 38(4) (*Use of proxies*) of Part 11 (*Proxies and corporate representation*) of this Schedule.

- (3) Where—

- (a) a proxy-holder has authenticated the proxy as being authorised to do so by the principal; and
- (b) the proxy specifically directs the proxy-holder to vote in the way mentioned in sub-paragraph (1),

the proxy-holder must nevertheless not vote in that way without having produced to the chairman authorisation from the principal sufficient to show that the proxy -holder was entitled so to authenticate the proxy.

42. Vote by chairman as proxy-holder

Where, in a meeting of creditors in an administration, where there is a Deed of Company Arrangement or a creditors' voluntary winding-up or a compulsory winding-up, the chairman holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chairman must propose it unless the chairman considers that there is good reason for not doing so; and
- (b) if the chairman does not propose it, the chairman must as soon as reasonably practicable after the meeting deliver notice to the principal of the reason why not.

43. Corporate representation

- (1) A person authorised to represent a corporation (other than as a proxy) at a meeting of creditors or contributories must produce to the chairman—

- (a) the instrument conferring the authority; or
- (b) a copy of it certified as a true copy by—
 - (i) two directors;
 - (ii) a director and the secretary; or
 - (iii) a director in the presence of a witness who attests the Director's signature.

- (2) The instrument conferring the authority must have been executed in accordance with section 39(1) to (3) (*Execution of documents*) of the Companies Regulations 2020 unless the instrument is the constitution of the corporation.

44. Action where person excluded

- (1) In this paragraph and in paragraphs 45 (*Indication to excluded person*) and 46 (*Complaint*) of Part 11 (*Proxies and corporate representation*) of this Schedule, an “**excluded person**” means a person who has taken all steps necessary to attend a meeting under the arrangements which—
- (a) have been put in place by the convener of the meeting under paragraph 18 (*Remote attendance at meetings*) of Part 6 (*Constitution of meetings*) of this Schedule; but
 - (b) do not permit that person to attend the whole or part of that meeting.
- (2) Where the chairman becomes aware during the course of the meeting that there is an excluded person, the chairman may—
- (a) continue the meeting;
 - (b) declare the meeting void and convene the meeting again; or
 - (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.
- (3) Where the chairman continues the meeting, the meeting is valid unless—
- (a) the chairman decides in consequence of a complaint under paragraph 46 (*Complaint*) of Part 11 (*Proxies and corporate representation*) of this Schedule to declare the meeting void and hold the meeting again; or
 - (b) the Court directs otherwise.
- (4) Without prejudice to sub-paragraph (2), where the chairman becomes aware during the course of the meeting that there is an excluded person, the chairman may, in the chairman’s discretion and without an adjournment, declare the meeting suspended for any period up to one (1) hour.

45. Indication to excluded person

- (1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion.
- (2) A request under sub-paragraph (1) must be made as soon as reasonably practicable in accordance with sub-paragraph (3).
- (3) A request under sub-paragraph (1) must be made to—
- (a) the chairman where it is made during the course of the business of the meeting; or
 - (b) the Office-holder where it is made after the conclusion of the business of the meeting.
- (4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under sub-paragraph (3) must deliver the requested indication to the excluded person no later than three (3) business days after the day

on which the exclusion is claimed to have occurred, or on which the request was made under sub-paragraph (1), as the case may be.

46. Complaint

- (1) A person may make a complaint if that person—
 - (a) is, or claims to be, an excluded person; or
 - (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.
- (2) The complaint must be made to the appropriate person, who is—
 - (a) the chairman, where the complaint is made during the course of the meeting; or
 - (b) the Office-holder, where it is made after the meeting.
- (3) The complaint must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following—
 - (a) the day on which the person was, appeared or claimed to be excluded; or
 - (b) where an indication is sought under paragraph 45 (*Indication to excluded person*) of Part 11 (*Proxies and corporate representation*) of this Schedule, the day on which the complainant received the indication.
- (4) The appropriate person must—
 - (a) consider whether there is an excluded person;
 - (b) where satisfied that there is an excluded person, consider the complaint; and
 - (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- (5) Sub-paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—
 - (a) a resolution was voted on at the meeting during the period of the person's exclusion; and
 - (b) the excluded person asserts how the excluded person intended to vote on the resolution.
- (6) Where the appropriate person is satisfied if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must—
 - (a) count the intended vote as having been cast in that way;
 - (b) amend the record of the result of the resolution; and
 - (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change.
- (7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (8) The appropriate person must deliver notice to the complainant of any decision.

- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the Court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.

PART 12

COMPANY MEETINGS

47. Company meetings (general)

Unless these Regulations provide otherwise, a Company meeting must be called and conducted, and records of the meeting must be kept in accordance with the law of the Abu Dhabi Global Market, including any applicable provision in or made under the Companies Regulations 2020.

SCHEDULE 7

CREDITORS' COMMITTEES

PART 1

INTRODUCTORY

1. Formation of creditors' committees

- (1) This Part applies to creditors' committees in—
 - (a) an administration;
 - (b) an administrative receivership;
 - (c) a creditors' voluntary winding-up; and
 - (d) a winding-up by the Court.
- (2) A meeting of creditors may establish a creditors' committee, as stated in Section 72 (*Creditors' committee*) of Part 1 (*Administration*), Section 161 (*Committee of creditors*) of Part 2 (*Receivership*) and Section 230 (*Liquidation committee*) of Part 3 (*Winding-up*) and such creditors' committee shall carry out functions conferred on it by or under these Regulations and this Schedule.

PART 2

INTERPRETATION

2. Functions of a creditors' committee

In addition to any functions conferred on a creditors' committee by any provision of these Regulations, a creditors' committee must assist the Office-holder in discharging the Office-holder's functions and act in relation to the Office-holder in such manner as may from time to time be agreed.

PART 3

MEMBERSHIP AND FORMALITIES

3. Number of members of a creditors' committee

- (1) A creditors' committee must have at least three members but not more than five members.
- (2) Sub-paragraph (1) is subject to paragraphs 8 (*Cessation of creditors' committee in a winding-up when creditors are paid in full*) and 9 (*Vacancies - creditor members of creditors' committee*) of Part 3 (*Membership and formalities*) of this Schedule.

4. Eligibility to be a member of a creditors' committee

A person claiming to be a creditor is eligible to be a member of the creditors' committee—

- (a) in an administration or an administrative receivership if that person's claim—
 - (i) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and

- (ii) is not fully secured; and
- (b) in a creditors' voluntary winding-up or a winding-up by the Court, if—
 - (i) that person has delivered a proof;
 - (ii) the proof has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distributions or dividends; and
 - (iii) the debt is not fully secured.

5. Eligibility of body corporate to be a member of creditors' committee

A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative appointed under paragraph 16 (*Committee members' representatives*) of Part 4 (*Meetings of committee*) of this Schedule.

6. Formalities of establishment (certificate of due constitution)

- (1) A creditors' committee does not come into being (and accordingly cannot act), until the Office-holder has issued a certificate of its due constitution.
- (2) The certificate of due constitution must—
 - (a) identify the proceedings;
 - (b) identify and provide contact details for the Office-holder;
 - (c) state that the creditors' committee has been duly constituted;
 - (d) identify each body corporate that is a member of the creditors' committee;
 - (e) give the full name and postal address of a member which is not a body corporate; and
 - (f) be authenticated and dated by the Office-holder.
- (3) If the Office-holder is not the chairman of the meeting of creditors which resolves to establish the creditors' committee, then the chairman must as soon as reasonably practicable deliver notice of the resolution to the Office-holder (or, as the case may be, to the person the meeting appoints as Office-holder), and inform the Office-holder of the names and addresses of the persons elected to be members of the creditors' committee.
- (4) Before a person may act as a member of the creditors' committee that person must agree to do so.
- (5) Agreement to act may be given by a person's proxy holder attending the meeting establishing the creditors' committee or, in the case of a body corporate, by its duly appointed representative, unless the relevant proxy or authorisation does not allow this.
- (6) The certificate of due constitution must be issued as soon as reasonably practicable after the minimum number of persons (in accordance with paragraph 3 (*Number of members of a creditors' committee*) of Part 3 (*Membership and formalities*) of this Schedule) have agreed to act as members.
- (7) The Office-holder must, as soon as reasonably practicable deliver the certificate to the Registrar.

7. Issue of an amended certificate of due constitution

- (1) The Office-holder must issue an amended certificate of constitution if there is a change in membership of the creditors' committee.
- (2) The amended certificate must—
 - (a) identify the proceedings;
 - (b) identify and provide contact details for the Office-holder;
 - (c) state the date of the original certificate of due constitution and the date of the last amended certificate (if any);
 - (d) state that this amended certificate replaces the previous certificate;
 - (e) identify each body corporate that is a member of the creditors' committee;
 - (f) give the full name and postal address of a member which is not a body corporate;
 - (g) state whether any member has become a member since the issue of the previous certificate;
 - (h) give the full name and address of any member named on the previous certificate who is no longer a member and the date when such membership ended; and
 - (i) be authenticated and dated by the Office-holder.
- (3) The Office-holder must, as soon as reasonably practicable deliver the amended certificate to the Registrar.

8. Cessation of creditors' committee in a winding-up when creditors are paid in full

- (1) Where the creditors have been paid in full together with interest in accordance with paragraph 28 (*Interest*) of Part 3 (*Creditors' claims*) of Schedule 5 (*Proofs and Distribution*), the liquidator must—
 - (a) issue a certificate to that effect; and
 - (b) deliver to the Registrar a notice to that effect together with a copy of the certificate referred to in sub-paragraph (1)(a).
- (2) On the issue of such a certificate the creditors' committee ceases to exist.
- (3) The certificate must—
 - (a) identify the liquidator;
 - (b) contain a statement by the liquidator certifying that the creditors of the Company have been paid in full with interest in accordance with paragraph 28 (*Interest*) of Part 3 (*Creditors' claims*) of Schedule 5 (*Proofs and Distribution*); and
 - (c) be authenticated and dated by the liquidator.

9. Vacancies - creditor members of creditors' committee

- (1) This paragraph applies if there is a vacancy in the membership of a creditors' committee.

- (2) The vacancy need not be filled if—
 - (a) the Office-holder and a majority of the remaining committee members agree; and
 - (b) the number of members does not fall below three.
- (3) The Office-holder may appoint a creditor, who is qualified under paragraph 4 (*Eligibility to be a member of a creditors' committee*) of Part 3 (*Membership and formalities*) of this Schedule to be a member of the creditors' committee, to fill the vacancy, if—
 - (a) a majority of the members of the creditors' committee agree to the appointment; and
 - (b) the creditor consents to act.
- (4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with that creditor's consent) to fill the vacancy.
- (5) Where the vacancy is filled by an appointment made by a meeting of creditors which the Office-holder does not attend, the chairman of the meeting must report the appointment to the Office-holder.

10. Resignation

A member of a creditors' committee may resign by notice in writing delivered to the Office-holder.

11. Termination of membership

Membership of a creditors' committee is automatically terminated if—

- (a) that member neither attends nor is represented at three consecutive meetings (unless it is resolved at the third of those meetings that this paragraph is not to apply in that member's case);
- (b) that member has ceased to be eligible to be a member of the creditors' committee under paragraph 4 (*Eligibility to be a member of a creditors' committee*) of Part 3 (*Membership and formalities*) of this Schedule; or
- (c) that member ceases to be a creditor and a period of three months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor.

12. Removal

A member of the creditors' committee may be removed by a resolution at a meeting of creditors.

PART 4

MEETINGS OF COMMITTEE

13. Meetings of committee

- (1) Subject as follows, meetings of the creditors' committee must be held when and where determined by the Office-holder.
- (2) The Office-holder must call a first meeting of the creditors' committee to take place within six weeks of the establishment of the creditors' committee.
- (3) After the calling of the first meeting, the Office-holder must call a meeting—
 - (a) if so requested by a member of the creditors' committee or a member's representative (the meeting then to be held within 21 days of the request being received by the Office-holder); and
 - (b) for a specified date, if the creditors' committee has previously resolved that a meeting be held on that date.
- (4) The Office-holder must give five business days' notice of the venue of a meeting to every member of the creditors' committee (or a member's representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.
- (5) Waiver may be signified either at or before the meeting.
- (6) Where the Office-holder has determined that a meeting should be conducted and held in the manner referred to in paragraph 19 (*Remote attendance at meetings of creditors' committees*) of Part 4 (*Meetings of committee*) of this Schedule, the notice period mentioned in sub-paragraph (4) is seven business days.

14. The chairman at meetings

- (1) The chairman at a meeting of the creditors' committee must be the Office-holder or an Appointed Person.
- (2) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.
- (3) Subject to anything to the contrary in these Regulations the meeting must be summoned and conducted in the case of—
 - (a) a Company incorporated in the Abu Dhabi Global Market; or
 - (b) a company incorporated outside the Abu Dhabi Global Market,in accordance with these Regulations, including any applicable provision in or made under the Companies Regulations 2020.
- (4) The chairman of the meeting shall cause minutes of its proceedings to be entered in the minute book of the Company or company (as the case may be).

15. Quorum

A meeting of the creditors' committee is duly constituted if due notice of it has been delivered to all the members, and at least two of the members are in attendance or represented.

16. Committee members' representatives

- (1) A member of the creditors' committee may, in relation to the business of the creditors' committee, be represented by another person duly authorised by the member for that purpose.
- (2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specially) and authenticated by or on behalf of the committee member.
- (3) A proxy in relation to a meeting of creditors shall (unless it contains a statement to the contrary) be treated as a letter of authority to act generally authenticated by or on behalf of the committee member.
- (4) The chairman at a meeting of the creditors' committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if it appears to the chairman that the authority is deficient.
- (5) No person may be represented by—
 - (a) another member of the creditors' committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate; or
 - (d) a disqualified Director.
- (6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

17. Voting rights and resolutions

- (1) At a meeting of the creditors' committee, each member (whether the member is in attendance or is represented by a representative) has one vote; and a resolution is passed when a majority of the members attending or represented have voted in favour of it.
- (2) Every resolution passed must be recorded in writing and authenticated by the chairman, either separately or as part of the minutes of the meeting, and the record must be kept with the records of the Insolvency Proceedings and the minute book of the Company or company (as the case may be).

18. Resolutions by correspondence

- (1) The Office-holder may seek to obtain the agreement of the members of the creditors' committee to a resolution by delivering to every member (or the member's representative designated for the purpose) a copy of the proposed resolution in accordance with this paragraph 18.
- (2) The Office-holder must deliver to each member of the creditors' committee or the member's representative (as the case may be) a copy of the proposed resolution.

- (3) The resolution must be set out in such a way that the recipient may indicate agreement or dissent on the copy and, where there is more than one resolution, may indicate agreement or dissent from each one separately.
- (4) A member of the creditors' committee may, within seven business days from the delivery of a resolution, require the Office-holder to summon a meeting of the creditors' committee to consider the matters raised by the resolution.
- (5) In the absence of such a request, the resolution is passed by the creditors' committee if a majority of the members deliver notice to the Office-holder that they agree with the resolution.
- (6) A copy of every resolution passed under this paragraph 18, and a note that the agreement of the creditors' committee was obtained, must be kept with the records of the Insolvency Proceedings.

19. Remote attendance at meetings of creditors' committees

- (1) This paragraph applies to a meeting of a creditors' committee held under these Regulations.
- (2) Where the Office-holder considers it appropriate, 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) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.
- (4) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting, any information or opinions which that person has on the business of the meeting.
- (5) A person is able to exercise the right to vote at a meeting when—
 - (a) that person is able to vote during the meeting on resolutions or determinations put to the vote at that meeting; and
 - (b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.
- (6) Where such a meeting is to be held, the Office-holder must make whatever arrangements the Office-holder considers appropriate to—
 - (a) enable those attending the meeting to exercise their rights to speak or vote; and
 - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (7) A requirement in this Schedule to specify a place for the meeting may be satisfied by specifying the arrangements the Office-holder proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the Office-holder—
 - (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.

- (8) In making the arrangements referred to in sub-paragraph (6) and in forming the opinion referred to in sub-paragraph (7)(b), the Office-holder must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.
- (9) Where the notice of a meeting does not specify a place for the meeting the Office-holder must specify a place for the meeting if at least one member of the creditors' committee requests the Office-holder to do so in accordance with paragraph 20 (*Procedure for requests that a place for a meeting should be specified*) of Part 4 (*Meetings of committee*) of this Schedule.

20. Procedure for requests that a place for a meeting should be specified

- (1) This paragraph applies to a request to the Office-holder under paragraph (9)19 (*Remote attendance at meetings of creditors' committee*) of Part 4 (*Meetings of committee*) of this Schedule to specify a place for the meeting.
- (2) The request must be made within five business days of the date on which the Office-holder sent the notice of the meeting in question.
- (3) Where the Office-holder considers that the request has been properly made in accordance with this paragraph, the Office-holder must—
 - (a) deliver notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place; and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than seven business days after the original date for the meeting; and
 - (c) give five business days' notice of the venue to all those previously given notice of the meeting.
- (4) The notices required by sub-paragraphs (3)(a) and (3)(c) may be delivered at the same or different times.
- (5) Where the Office-holder has specified a place for the meeting in response to a request under paragraph 19(9) (*Remote attendance at meetings of creditors' committee*) of Part 4 (*Meetings of committee*) of this Schedule, the chairman of the meeting must attend the meeting by being present in person at that place.

PART 5

SUPPLY OF INFORMATION TO THE LIQUIDATION COMMITTEE

21. Obligations to supply information to the Liquidation Committee

- (1) This paragraph only applies in relation to a creditors' voluntary winding-up or a compulsory winding-up.
- (2) In the absence of any directions by the Liquidation Committee under sub-paragraph (3), not less than once in every period of six months the Office-holder must deliver a report to every member of the Liquidation Committee setting out the position generally in relation to the progress of the proceedings and matters arising in connection with them to which the Office-holder considers the Liquidation Committee's attention should be drawn.

- (3) The Office-holder must, as soon as reasonably practicable after being directed by the Liquidation Committee—
 - (a) deliver a report to every member of the Liquidation Committee setting out the matters mentioned in sub-paragraph (2) (but not more often than once in any period of two months); or
 - (b) comply with a request for information.
- (4) However the Office-holder need not comply with such a direction where it appears to the Office-holder that—
 - (a) the direction is frivolous or unreasonable;
 - (b) the cost of complying would be excessive, having regard to the relative importance of the information; or
 - (c) the insolvent estate is without sufficient funds for the Office-holder to comply.
- (5) Where the Liquidation Committee has come into being more than 28 days after the appointment of the Office-holder, the Office-holder must make a summary report to the members of the Liquidation Committee of what actions the Office-holder has taken since the Office-holder's appointment, and must answer such questions as they may put to the Office-holder relating to the Office-holder's conduct of the Insolvency Proceedings so far.
- (6) A person who becomes a member of the Liquidation Committee at any time after its first establishment is not entitled to require a report under this paragraph by the Office-holder of any matters previously arising, other than a summary report.
- (7) Nothing in this paragraph disentitles the Liquidation Committee, or any member of it, from having access to the Office-holder's record of the Insolvency Proceedings, or from seeking an explanation of any matter within the Liquidation Committee's responsibility.

22. Obligations to supply information to the creditors' committee: administration and administrative receivership

- (1) This paragraph only applies where—
 - (a) a creditors' committee in an administration resolves under Section 72(2) (*Creditors' committee*) to require the attendance of an administrator; or
 - (b) a creditors' committee in an administrative receivership resolves under Section 161 (*Committee of creditors*) to require the attendance of the administrative receiver.
- (2) The notice to the Office-holder requiring the Office-holder's attendance must be—
 - (a) authenticated by a member of the creditors' committee; and
 - (b) accompanied by a copy of the resolution.
- (3) A member's representative may authenticate the notice for the member.
- (4) The meeting at which the Office-holder's attendance is required must be fixed by the creditors' committee for a business day, and must be held at such time and place as the Office-holder determines.

- (5) Where the Office-holder so attends, the members of the creditors' committee may elect any one of their number to be chairman of the meeting in place of the Office-holder or a nominee of the Office-holder.

PART 6

MISCELLANEOUS

23. Expenses of members etc.

- (1) The Office-holder must pay out of the insolvent estate the reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in attending the committee's meetings or otherwise on the committee's business.
- (2) In the case of an administrative receivership—
- (a) such expenses are an expense of the receivership; and
 - (b) the requirement for the Office-holder to pay the expenses does not apply to a meeting of the creditors' committee held within three months of a previous meeting, unless the meeting is summoned by the administrative receiver.
- (3) In any other case—
- (a) the expenses are an expense of the Insolvency Proceedings; and
 - (b) the requirement for the Office-holder to pay the expenses does not apply to a meeting of the creditors' committee held within six weeks of a previous meeting, unless the meeting is summoned by the Office-holder.

24. Dealings by committee members and others

- (1) This paragraph applies in a creditors' voluntary winding-up and a winding-up by the Court to the following persons—
- (a) a member of the Liquidation Committee;
 - (b) a member's representative;
 - (c) a person who is an associate of—
 - (i) a member; or
 - (ii) a member's representative; and
 - (d) a person who has been a member at any time in the last 12 months.
- (2) Such a person must not enter into a transaction as a result of which that person would—
- (a) receive as an expense of the Insolvency Proceedings a payment for services given or goods supplied in connection with the administration of the insolvent estate;
 - (b) obtain a profit from the administration of the Company's assets; or
 - (c) acquire an asset forming part of the insolvent estate.

- (3) However such a transaction may be entered into—
 - (a) with the prior sanction of the Liquidation Committee, where it is satisfied (after disclosure of the circumstances) that the person will be giving full value in the transaction;
 - (b) with the prior permission of the Court; or
 - (c) if that person does so as a matter of urgency, or by way of performance of a contract in force before the start of the Insolvency Proceedings, and that person obtains the Court's permission for the transaction, having applied for it without undue delay.
- (4) Neither a member nor a representative of a member who is to participate directly or indirectly in a transaction may vote on a resolution to sanction that transaction.
- (5) The Court may, on the application of a person interested—
 - (a) set aside a transaction on the ground that it has been entered into in contravention of this paragraph; and
 - (b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this paragraph applies to account for any profit obtained from the transaction and compensate the insolvent estate for any resultant loss.
- (6) The Court will not make an order under the previous sub-paragraph in respect of an associate of a member of the Liquidation Committee or of a member's representative, if satisfied that the associate or representative entered into the relevant transaction without having any reason to suppose that in doing so the associate or representative would contravene this paragraph.
- (7) The costs of an application to the Court for permission under this paragraph do not fall on the insolvent estate, unless the Court so orders.

25. Dealings by committee members and others: administration and administrative receivership

- (1) This paragraph applies in an administration and administrative receivership.
- (2) Membership of the creditors' committee does not prevent a person from dealing with the Company provided that a transaction in the course of such dealings is in good faith and for value.
- (3) The Court may, on the application of an interested person—
 - (a) set aside a transaction which appears to it to be contrary to this paragraph; and
 - (b) make such other order about the transaction as it thinks just including an order requiring a person to whom this paragraph applies to account for any profit obtained from the transaction and compensate the Company for any resultant loss.

26. Formal defects

The acts of the creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the creditors' committee or a member's representative or in the formalities of its establishment.

27. Winding-up by the Court - functions of committee

If for the time being there is no Liquidation Committee in a winding-up of a Company by the Court the functions of the Liquidation Committee are vested in the Registrar.

PART 7

WINDING-UP BY THE COURT - ADMINISTRATION FOLLOWED BY WINDING-UP

28. Application of Part

This Part applies where a winding-up order has been made by the Court upon the application of the administrator under Section 113 (*Court ending administration on application of administrator*) and—

- (a) the Court makes a winding-up order in the circumstances described in Section 210(3) (*Appointment of provisional liquidator or of liquidator following administration*) appointing the administrator as the liquidator;
- (b) a creditors' committee was established in the administration under Section 72 (*Creditors' committee*);
- (c) at the date of the winding-up order the creditors' committee has at least three, but no more than five, members.

29. Continuation of creditors' committee

The creditors' committee is deemed to have been established under Section 72 (*Creditors' Committee*) and—

- (a) no action may be taken under Section 230 (*Liquidation committee*) to establish any other Liquidation Committee;
- (b) pending the issue of a certificate of continuance (as referred to in paragraph 30 (*Certificate of continuance*) of Part 7 (*Winding-up by the Court - administration followed by winding-up*) of this Schedule), the creditors' committee is suspended and cannot act.

30. Certificate of continuance

- (1) The liquidator must ascertain whether the members of the creditors' committee agree to continue to act.
- (2) If the minimum number of three members required by paragraph 3 (*Number of members of a creditors' committee*) of Part 3 (*Membership and formalities*) of this Schedule to form a creditors' committee have signified their agreement to act, the liquidator must issue a certificate of the committee's continuance.
- (3) The certificate of continuance must—
 - (a) identify and provide contact details for the Office-holder;
 - (b) identify each Company that is a member of the creditors' committee;
 - (c) where a member of the creditors' committee is not a Company, state the full name and postal address of that member;
 - (d) where a member represents a creditor, state the name and postal address of the creditor that member is representing;

- (e) contain a statement of the continuance of the creditors' committee established under Section 72 (*Creditors' Committee*); and
 - (f) be authenticated and dated by the Office-holder.
- (4) No person may act or continue to act as a member of the creditors' committee unless that person has agreed to do so.
 - (5) The liquidator must deliver the certificate of continuance to the Registrar.

31. Amended certificate of continuance

- (1) If members of the former creditors' committee other than those identified in the certificate of continuance signify their agreement to act as members of the Liquidation Committee, or if there is any other change in the membership of the Liquidation Committee, the liquidator must as soon as reasonably practicable issue an amended certificate of continuance.
- (2) The amended certificate must—
 - (a) identify and provide contact details for the Office-holder;
 - (b) state the date of the certificate of continuance and the date of the most recent amended certificate (if any) issued under this paragraph;
 - (c) state that this amended certificate replaces the latest certificate referred to in sub-paragraph (2)(b);
 - (d) identify each Company that is a member of the Liquidation Committee;
 - (e) where a member of the Liquidation Committee is not a Company, state the full name and postal address of that member;
 - (f) where a member represents a creditor, state the name and postal address of the creditor that member is representing;
 - (g) indicate any member of the Liquidation Committee who has become a member since the latest certificate referred to in sub-paragraph (2)(b);
 - (h) for any former member of the Liquidation Committee named on the latest certificate referred to in sub-paragraph (2)(b) state the relevant information under sub-paragraph (2)(d), (2)(e) or (2)(f) as applicable and the date when that member's membership of the Liquidation Committee terminated; and
 - (i) be authenticated and dated by the Office-holder.
- (3) The liquidator must deliver the amended certificate of continuance to the Registrar.

32. Obligations of the liquidator to the committee

- (1) As soon as reasonably practicable after the issue of the certificate of continuance under paragraph 30 (*Certificate of continuance*) of Part 7 (*Winding-up by the Court – administration followed by winding-up*) of this Schedule, the liquidator must report to the Liquidation Committee what actions the liquidator has taken since the date on which the Company went into liquidation.
- (2) A person who becomes a member of the Liquidation Committee after the date of issue of the certificate of continuance is not entitled to require a report from the liquidator of a matter previously arising, other than a summary report.

- (3) Nothing in this paragraph disentitles the Liquidation Committee, or a member of it, from having access to the records of the winding-up (whether relating to the period when the Company was in administration or to any subsequent period), or from seeking an explanation of a matter within the Liquidation Committee's responsibility.

SCHEDULE 8

PREFERENTIAL DEBTS

- (1) So much of any amount which is—
 - (a) owed by the Company to a person who is or has been an employee of the Company; and
 - (b) payable by way of non-discretionary salary (including agreed holiday remuneration) or contributions to an occupational pension scheme in respect of the whole or any part of the period of three (3) months before the relevant date.
- (2) “**Relevant date**” for these purposes means—
 - (a) in relation to a Company which is being wound up by the Court, the date of the appointment of a provisional liquidator or, if no such appointment is made, the date of the winding-up order;
 - (b) in relation to a Company which is being wound up voluntarily, the date of the resolution for the winding-up of the Company; or
 - (c) in relation to a Company which is in administration, the date on which it entered administration.

SCHEDULE 9

CONTRAVENTIONS

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
Part 1: Administration		
s.23(6)	Notice of appointment - making a false declaration	Level 6
s.26(2)	Commencement of appointment - failure to notify the administrator after appointment	Level 6
s.31(7)	Notice of intention to appoint - making a false declaration	Level 6
s.33(7)	Notice of appointment - making a false declaration	Level 6
s.35(2)	Commencement of appointment - failure to notify the administrator after appointment	Level 6
s.47(2)	Publicity - failure to publicise administration	Level 1
s.47(4)	Publicity - failure to publicise Deed of Company Arrangement	Level 1
s.48(8)	Announcement of administrator's appointment - formalities to adhere to	Level 1
s.51(7)	Statement of Company's affairs - failure to provide statement	Level 5
s.56(8)	Administrator's proposals - failure to submit proposal	Level 1
s.61(5)	Requirement for initial creditors' meeting - failure to convene meeting	Level 1
s.64(4)	Business and result of initial creditors' meeting - failure to report	Level 1
s.65(8)	Revision of administrator's proposals - failure to report	Level 1
s.69(10)	Reports to creditors - failure to report	Level 1
s.71(2)	Further creditors' meeting - failure to convene meeting	Level 1
s.100(6)	Charged property - failure to send copy of the order	Level 1
s.101(5)	Hire-purchase property - failure to send copy of the order	Level 1
s.110(5)	Automatic end of administration - failure to notify Registrar of termination	Level 1
s.110(11)	Automatic end of administration - failure to notify Registrar of extension	Level 1
s.112(3)	Notice of automatic end of administration - failure to notify	Level 1
s.115(5)	Termination of administration where objective achieved - failure to notify	Level 1
s.124(9)	Moving from administration to dissolution - failure to notify	Level 1

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
s.127(3)	Notice to Companies Registrar where administration ends - failure to notify	Level 1
s.134(3)	Administrator ceasing to be registered - failure to give notice	Level 1
s.144(2)	Failure of administrator in their duties vacating office	Level 1
Part 2: Receivership		
s.153(2)	Notification that receiver has been appointed - failure to notify	Level 1
s.157(3)	Accounts - failure of receiver to deliver accounts to Registrar	Level 1
s.159(7)	Vacation of office - failure to vacate and file notice	Level 1
s.162(3)	Notice and advertisement of appointment - formalities to adhere to	Level 1
s.165(5)	Statement of Company's affairs - failure to submit	Level 4
s.170(7)	Power to dispose of charged property - failure to submit a copy of the order	Level 1
s.171(3)	Meeting of creditors - failure to convene meeting	Level 1
Part 3: Winding-Up		
s.175(3)	Declaration of solvency - without reasonable grounds	Level 6
s.181(3)	Progress report to members at year's end - failure to report	Level 3
s.182(4)	Final meeting prior to dissolution - failure to send to Registrar a copy of account of winding-up and return of final meeting	Level 1
s.183(4)	Effect of Company's insolvency - failure to convene meeting where Company insolvent	Level 5
s.186(3)	Meeting of members and creditors - failure to convene meetings	Level 4
s.190(3)	Progress report to members and creditors at year's end - failure to produce and distribute reports	Level 3
s.191(4)	Final meeting prior to dissolution - failure to submit a copy of the winding-up	Level 1
s.192(2)	Notice of resolution to wind up - failure to publish	Level 1
s.194(2)	Notice by liquidator of his appointment - failure to publish	Level 1
s.207(3)	Notice of winding-up order - failure to publish	Level 1
s.211(3)	Power to stay winding-up - failure to forward copies of the order	Level 1
s.212(2)	Progress report to contributories and creditors - failure to produce and submit	Level 4

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
s.213(4)	Duty to summon final meeting - liquidator failing to send to Registrar a copy of account of winding-up and return of final meetings	Level 1
s.216(2)	Notification that Company is in liquidation - failure to notify	Level 1
s.217(4)	Powers of liquidator - liquidator exercising powers before creditors' meeting	Level 3
s.218(9)	Power to disclaim onerous property - failure to submit notice to Registrar	Level 3
s.232(5)	Statement of Company's affairs - failure to submit	Level 4
s.233(4)	Statement of Company's affairs by Directors - failure to submit	Level 4
s.244(1)	Fraud in anticipation of winding-up or insolvent administration	Level 8
s.245	Transaction in fraud of creditors	Level 7
s.246	Misconduct in course of winding-up or insolvent administration	Level 8
s.247	Falsification of Company's books	Level 8
s.248	Material omission from statement relating to Company's affairs	Level 8
s.249	False representations to creditors	Level 8
s.255(3)	Duty to co-operate with Office-holder - failure to co-operate	Level 5
s.294(4)	Dissolution and early dissolution - failure to deliver copy of order to Registrar	Level 1
Schedule 1 (Meetings, Time Limits, Notices and Documents) Part 9 (Inspection of Documents, Copies and Provision of Information)		
Paragraph 43(3) of Schedule 1	Falsely claiming to be a creditor, member of a Company or a contributory of a Company to gain sight of certain documents	Level 7

SCHEDULE 10

APPLICATION OF UNCITRAL MODEL LAW

CHAPTER I General Provisions

Article 1 Scope of application

- (1) This Law applies where—
 - (a) assistance is sought in the Abu Dhabi Global Market by a foreign court or a foreign representative in connection with a foreign proceeding;
 - (b) assistance is sought in a foreign State in connection with a proceeding under these Regulations;
 - (c) a foreign proceeding and a proceeding under these Regulations in respect of the same debtor are taking place concurrently; or
 - (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under these Regulations.
- (2) This Law does not apply to a proceeding concerning an entity which the Board designates as an entity which falls within this paragraph (2).

Article 2 Definitions

For the purposes of this Law—

- (a) **“foreign proceeding”** means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (b) **“foreign main proceeding”** means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) **“foreign non-main proceeding”** means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of sub-paragraph (f) of this article;
- (d) **“foreign representative”** means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;
- (e) **“foreign court”** means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) **“establishment”** means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services; and
- (g) **“Abu Dhabi Global Market Insolvency Officeholder”** means a liquidator or provisional liquidator within the meaning of these Regulations.

Article 3 International obligations of the Abu Dhabi Global Market

To the extent that this Law conflicts with an obligation of the Abu Dhabi Global Market arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

Article 4 Competent court

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Court.

Article 5 Authorisation of Office-holder to act in a foreign State

An Office-holder is authorised to act in a foreign State on behalf of a proceeding under these Regulations, as permitted by the applicable foreign law.

Article 6 Public policy exception

Nothing in this Law prevents the Court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of the Abu Dhabi Global Market.

Article 7 Additional assistance under other laws

Nothing in this Law limits the power of the Court or an Office-holder to provide additional assistance to a foreign representative under other laws of the Abu Dhabi Global Market.

Article 8 Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II Access of Foreign Representatives and Creditors to Courts in the Abu Dhabi Global Market

Article 9 Right of direct access

A foreign representative is entitled to apply directly to the Court.

Article 10 Limited jurisdiction

The sole fact that an application pursuant to this Law is made to the Court by a foreign representative does not subject the foreign representative or the foreign assets of the debtor to the jurisdiction of the Court for any purpose other than the application.

Article 11 Application by a foreign representative to commence a proceeding under these Regulations

A foreign representative appointed in foreign main proceedings or foreign non-main proceedings is entitled to apply to commence a proceeding under these Regulations if the conditions for commencing such a proceeding are otherwise met.

Article 12 Participation of a foreign representative in a proceeding under these Regulations

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under these Regulations.

Article 13 Access of foreign creditors to a proceeding under these Regulations

- (1) Subject to paragraph (2) of this Article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under these Regulations as creditors in the Abu Dhabi Global Market.
- (2) Paragraph (1) of this Article does not affect the ranking of claims in a proceeding under these Regulations, except that the claims of foreign creditors shall not be given lower priority than that of general unsecured creditors solely because the holder of such a claim is a foreign creditor.

Article 14 Notification to foreign creditors of a proceeding under these Regulations

- (1) Whenever under these Regulations notification is to be given to creditors in the Abu Dhabi Global Market, such notification shall also be given to the known creditors that do not have addresses in the Abu Dhabi Global Market. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.
- (3) When a notification of a right to file a claim is to be given to foreign creditors, the notification shall—
 - (a) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) indicate whether secured creditors need to file their secured claims; and
 - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of the Abu Dhabi Global Market and the orders of the Court.

CHAPTER III Recognition of a Foreign Proceeding and Relief

Article 15 Application for recognition of a foreign proceeding

- (1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (2) An application for recognition shall be accompanied by—
 - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;
 - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings and proceedings under these Regulations in respect of the debtor that are known to the foreign representative.
- (4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of the Abu Dhabi Global Market.

Article 16 Presumptions concerning recognition

- (1) If the decision or certificate referred to in paragraph (2) of Article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (a) of Article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (d) of Article 2, the Court is entitled to so presume.
- (2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17 Decision to recognise a foreign proceeding

- (1) Subject to Article 6, a foreign proceeding shall be recognised if—
 - (a) the foreign proceeding is a proceeding within the meaning of sub-paragraph (a) of Article 2;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (d) of Article 2;
 - (c) the application meets the requirements of paragraph (2) of Article 15; and
 - (d) the application has been submitted to the Court referred to in Article 4.
- (2) The foreign proceeding shall be recognised—
 - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (f) of Article 2 in the foreign State.
- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) The provisions of Articles 15 to 16, this Article and Article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18 Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Court promptly of—

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding or proceeding under these Regulations regarding the same debtor that becomes known to the foreign representative.

Article 19 Relief that may be granted upon application for recognition of a foreign proceeding

- (1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is

urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

- (a) staying execution against the debtor's assets;
 - (b) entrusting the administration or realization of all or part of the debtor's assets located in the Abu Dhabi Global Market to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; or
 - (c) any relief mentioned in paragraph (1)(c), (d) and (g) of Article 21.
- (2) Unless extended under paragraph (1)(f) of Article 21, the relief granted under this Article terminates when the application for recognition is decided upon.
- (3) The Court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

Article 20 Effects of recognition of a foreign main proceeding

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding—
- (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (b) execution against the debtor's assets is stayed; and
 - (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (2) The stay and suspension referred to in paragraph (1) of this Article shall be—
- (a) the same in scope and effect as if the debtor had been made the subject of a winding-up order under these Regulations; and
 - (b) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under these Regulations in such a case, and the provisions of paragraph (1) of this Article shall be interpreted accordingly.
- (3) Paragraph (1)(a) of this Article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (4) Paragraph (1) of this Article does not affect the right to request or otherwise initiate the commencement of a proceeding under these Regulations or the right to file claims in such a proceeding.

Article 21 Relief that may be granted upon recognition of a foreign proceeding

- (1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—
- (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph (1)(a) of Article 20;
 - (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of Article 20;

- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1)(c) of Article 20;
 - (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (e) entrusting the administration or realisation of all or part of the debtor's assets located in the Abu Dhabi Global Market to the foreign representative or another person designated by the Court;
 - (f) extending relief granted under paragraph (1) of Article 19; or
 - (g) granting any additional relief that may be available to it under the laws of the Abu Dhabi Global Market.
- (2) Upon recognition of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Abu Dhabi Global Market to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in the Abu Dhabi Global Market are adequately protected.
 - (3) In granting relief under this Article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of the Abu Dhabi Global Market, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 22 Protection of creditors and other interested persons

- (1) In granting or denying relief under Article 19 or 21, or in modifying or terminating relief under paragraph (3) of this Article, the Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (2) The Court may subject relief granted under Article 19 or 21 to conditions it considers appropriate.
- (3) The Court may, at the request of the foreign representative or a person affected by relief granted under Article 19 or 21, or at its own motion, modify or terminate such relief.

Article 23 Actions to avoid acts detrimental to creditors

- (1) Upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the Court for an order under or in connection with Chapter 3 (*Voidable Transactions*) of Part 4 (*Protection of Assets in Liquidation and Administration*) of these Regulations.
- (2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the law of the Abu Dhabi Global Market, should be administered in the foreign non-main proceeding.
- (3) At any time when a proceeding under these Regulations is taking place regarding the debtor, the foreign representative shall not make an application under this Article except with the permission of the Court.

Article 24 Intervention by a foreign representative in proceedings in the Abu Dhabi Global Market

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of the Abu Dhabi Global Market are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV Cooperation with Foreign Courts and Foreign Representatives

Article 25 Cooperation and direct communication between the Court and foreign courts or foreign representatives

- (1) In matters referred to in Article 1, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an Abu Dhabi Global Market Office-holder.
- (2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26 Cooperation and direct communication between the Abu Dhabi Global Market Office-holder and foreign courts or foreign representatives

- (1) In matters referred to in Article 1, an Abu Dhabi Global Market Office-holder shall, in the exercise of its functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
- (2) The Office-holder is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27 Forms of cooperation

Cooperation referred to in Articles 25 and 26 may be implemented by any appropriate means, including—

- (a) appointment of a person or body to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by the Court of agreements concerning the coordination of proceedings; or
- (e) coordination of concurrent proceedings regarding the same debtor.

CHAPTER V Concurrent Proceedings

Article 28 Commencement of a proceeding under the law of the Abu Dhabi Global Market after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under these Regulations may be commenced only if the debtor has assets in the Abu Dhabi Global Market; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the Abu Dhabi Global Market and, to the extent necessary to implement cooperation and coordination under Articles 25, 26 and 27, to other assets of the debtor that, under the law of the Abu Dhabi Global Market, should be administered in that proceeding.

Article 29 Coordination of a proceeding under these Regulations and a foreign proceeding

Where a foreign proceeding and a proceeding under these Regulations are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under Articles 25, 26 and 27, and the following shall apply—

- (a) When the proceeding in the Abu Dhabi Global Market is taking place at the time the application for recognition of the foreign proceeding is filed—
 - (i) any relief granted under Article 19 or 21 must be consistent with the proceeding in the Abu Dhabi Global Market; and
 - (ii) if the foreign proceeding is recognised in the Abu Dhabi Global Market as a foreign main proceeding, Article 20 does not apply.
- (b) When the proceeding in the Abu Dhabi Global Market commences after recognition, or after the filing of the application for recognition, of the foreign proceeding—
 - (i) any relief in effect under Article 19 or 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the proceeding in the Abu Dhabi Global Market; and
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of Article 20 shall be modified or terminated pursuant to paragraph (2) of Article 20 if inconsistent with the proceeding in the Abu Dhabi Global Market.
- (c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of the Abu Dhabi Global Market, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30 Coordination of more than one foreign proceeding

In matters referred to in Article 1, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under Articles 25, 26 and 27, and the following shall apply—

- (a) any relief granted under Article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under Article 19 or 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding; or
- (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31 Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under these Regulations, proof that the debtor is insolvent.

Article 32 Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under these Regulations regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

SCHEDULE 11

SUPPLEMENTAL PROVISIONS APPLICABLE TO PROTECTED CELL COMPANIES

1. Interpretation

In this Schedule, the defined terms listed below shall have the following meanings—

“**cell**” has the meaning given in the Companies Regulations 2020;

“**Cell Liquidator**” means the person appointed as cell liquidator under a Cell Liquidation Order;

“**Cell Liquidation Order**” means an order under paragraph 4 (*Cell Liquidation Order*) of this Schedule;

“**cellular assets**” has the meaning given in the Companies Regulations 2020;

“**cell member**” means the member of a cell; and

“**non-cellular assets**” has the meaning given in the Companies Regulations 2020.

2. Liquidation of a Protected Cell Company

- (1) The members of a Protected Cell Company shall not pass a resolution to appoint a liquidator to the Protected Cell Company under these Regulations or the Companies Regulations 2020 if any cell is subject to a Cell Liquidation Order.
- (2) Any resolution passed contrary to sub-paragraph (1) shall be void and of no effect.
- (3) In the liquidation of a Protected Cell Company, the liquidator—
 - (a) shall, in the course of winding-up the Protected Cell Company, wind-up each cell of the Protected Cell Company;
 - (b) shall be bound to deal with the Protected Cell Company’s cellular assets and non-cellular assets in accordance with the requirements set out in Section 1057 (*Application of the Insolvency Regulations 2015 to cell Companies*) of Part 36 (*Cell Companies*) of the Companies Regulations 2020; and
 - (c) in discharge of the claims of creditors of the Protected Cell Company, shall apply the Protected Cell Company’s cellular assets and non-cellular assets to those entitled to have recourse thereto.
- (4) Parts 3 (*Winding-Up*) and 4 (*Protection of Assets in Liquidation and Administration*) of these Regulations shall apply to the liquidation of a Protected Cell Company with such modifications as are necessary to give effect to paragraph (3), and in the event of any conflict between the provisions of Parts 3 (*Winding-Up*) and 4 (*Protection of Assets in Liquidation and Administration*) and this Schedule the provisions of this Schedule shall prevail.

3. Application of these Regulations to cells

- (1) Subject to sub-paragraph (2), these Regulations shall apply to a cell of a Protected Cell Company which is the subject of a Cell Liquidation Order as if, where the context admits—
 - (a) the cell was a separate Company;
 - (b) the cell members were members of that separate Company;

- (c) the cellular assets attributable to the cell were the assets of that separate Company;
 - (d) references to liquidation or winding-up include a reference to a Cell Liquidation Order; and
 - (e) references to Insolvency Proceedings include a reference to a Cell Liquidation Order.
- (2) Parts 1 (*Administration*), 2 (*Receivership*) and 6 (*Cross-Border Insolvency*) and Chapters 1 (*General*), 2 (*Voluntary winding-up*), 3 (*Members' voluntary winding-up*), 4 (*Creditors' voluntary winding-up*), 5 (*Provisions applying to both kinds of voluntary winding-up*) and 6 (*Compulsory winding-up*) of Part 3 (*Winding-Up*) of these Regulations shall not apply to a cell of a Protected Cell Company.
 - (3) In the event of any conflict between the provisions of this Schedule and other provisions of these Regulations, the provisions of this Schedule shall prevail.

4. Cell Liquidation Order

- (1) Subject to the provisions of this paragraph, if in relation to a Protected Cell Company the Court is satisfied—
 - (a) that the cellular assets attributable to a particular cell of the Protected Cell Company are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
 - (b) that the making of an order under this paragraph would achieve the purposes set out in sub-paragraph (3),
 the Court may make a Cell Liquidation Order under this paragraph in respect of that cell.
- (2) A Cell Liquidation Order may be made in respect of one or more cells of a Protected Cell Company.
- (3) A Cell Liquidation Order is an order directing that the business and cellular assets attributable to a cell shall be managed by a Cell Liquidator specified in the order for the purposes of—
 - (a) the orderly closing down of the business attributable to the cell; and
 - (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.
- (4) Where the Court makes a Cell Liquidation Order it shall, at the same time, appoint a liquidator to act as Cell Liquidator under the Cell Liquidation Order.
- (5) A Cell Liquidator appointed under this paragraph must be an insolvency practitioner registered pursuant to Section 290 (*Qualification and registration of insolvency practitioners*) of these Regulations.

5. Application for a Cell Liquidation Order

- (1) An application for a Cell Liquidation Order in respect of a cell of a Protected Cell Company may be made by—
 - (a) the Protected Cell Company;
 - (b) the Directors of the Protected Cell Company;

- (c) any creditor of the Protected Cell Company in respect of that cell;
 - (d) any cell member in respect of that cell;
 - (e) the Financial Services Regulator; or
 - (f) the Registrar.
- (2) Notice of an application to the Court for a Cell Liquidation Order in respect of a cell of a Protected Cell Company shall be served upon—
- (a) the Protected Cell Company;
 - (b) the Financial Services Regulator;
 - (c) the Registrar; and
 - (d) such other persons, if any, as the Court may direct.

each of whom shall be given an opportunity of making representations to the Court before the Cell Liquidation Order is made.

- (3) The Court, on hearing an application for a Cell Liquidation Order, may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.
- (4) The Court may make a Cell Liquidation Order subject to such terms and conditions as it considers appropriate.
- (5) A Cell Liquidation Order shall—
 - (a) not be made if a liquidator is appointed to the Protected Cell Company; and
 - (b) be discharged upon the appointment of a liquidator in respect of the Protected Cell Company, unless the Court orders otherwise on being satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential member s or creditors, of the cell.

6. Functions and powers of a Cell Liquidator

- (1) The Cell Liquidator of a cell of a Protected Cell Company may—
 - (a) do all such things as may be necessary or expedient for the purposes set out in paragraph 4(3) (*Cell Liquidation Order*) of this Schedule; and
 - (b) exercise all the functions and powers of the Directors in respect of the business and cellular assets attributable to the cell.
- (2) The Cell Liquidator may at any time apply to the Court for—
 - (a) directions as to the extent or exercise of any function or power; or
 - (b) an order as to any matter arising in the course of the liquidation of the cell.
- (3) In exercising his functions and powers the Cell Liquidator shall be deemed to act as agent of the Protected Cell Company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.
- (4) Any person dealing with the Cell Liquidator in good faith and for value need not inquire whether the Cell Liquidator is acting within his powers.

7. Effect of Cell Liquidation Order

- (1) When an application has been made for, and during the period of operation of, a Cell Liquidation Order—
 - (a) no proceedings may be instituted or continued by, or against, the Protected Cell Company in relation to the cell in respect of which the Cell Liquidation Order was made, or against the business or cellular assets attributable to that cell; and
 - (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made,except with the consent of the Cell Liquidator or with leave of the Court.
- (2) During the period of operation of a Cell Liquidation Order, the Directors shall not exercise any powers or functions in respect of the business or the cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made, without the consent of the Cell Liquidator.

8. Distribution of Cellular Assets

- (1) Subject to Sections 263 (Insolvency of clearing and settlement intermediaries or Recognised *Bodies client assets*) of these Regulations, the cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made shall be applied by the Cell Liquidator in satisfaction of the following liabilities in the order of priority of—
 - (a) all remuneration and expenses properly incurred by the Cell Liquidator in winding-up the cell;
 - (b) any preferential debts of the Protected Cell Company which are attributable to the business or cellular assets of the cell; and
 - (c) the remainder of the cell's liabilities in accordance with sub-paragraph (3);subject to that application, any surplus shall be distributed in accordance with sub-paragraphs (4) and (5).
- (2) Creditors of a cell that is subject to a Cell Liquidation Order shall be regarded as preferential creditors of the cell to the extent they would be preferential creditors under Schedule 8 (*Preferential Debts*) of these Regulations if—
 - (a) the cell was a Company; and
 - (b) the Cell Liquidator was a liquidator under these Regulations.
- (3) The cell's unsecured debts (including all or any part of a secured debt which is treated as unsecured in accordance with Schedule 5 (*Proofs and Distribution*) in a winding-up) (other than the remuneration and expenses of the Cell Liquidator and preferential debts) rank equally between themselves in the Cell Liquidation and shall be paid in full unless the cellular assets are insufficient to meet them, in which case they abate in equal proportions among themselves.
- (4) Subject to the Articles of the Protected Cell Company, any surplus shall be distributed among the cell members in respect of the cell that is subject to the Cell Liquidation Order or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the Protected Cell Company.

- (5) Where there are no cell members in respect of the cell and no persons otherwise entitled to the surplus, any surplus shall be paid to the Protected Cell Company and shall become a non-cellular asset of the Protected Cell Company.

9. Discharge and variation of Cell Liquidation Orders

- (1) An application to Court may be made by a Cell Liquidator to—
- (a) discharge the Cell Liquidation Order if he thinks the purpose for which the order was made has been achieved or substantially achieved or is incapable of being achieved; or
 - (b) vary the Cell Liquidation Order.
- (2) The Court, on hearing an application for the discharge or variation of a Cell Liquidation Order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.
- (3) Upon the Court discharging a Cell Liquidation Order in respect of a cell on the ground that the purpose for which the order was made has been achieved or substantially achieved—
- (a) the Court may direct that any payment made by the Cell Liquidator to any creditor of the Protected Cell Company in respect of that cell shall be deemed full satisfaction of the liabilities of the Protected Cell Company to that creditor in respect of that cell; and
 - (b) the creditor's claims against the Protected Cell Company in respect of that cell shall be thereby deemed extinguished but nothing in this sub-paragraph (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the Protected Cell Company.
- (4) The Court may, upon discharging a Cell Liquidation Order in respect of a cell of a Protected Cell Company, direct that the cell shall be dissolved on such date as the Court may specify.
- (5) When a cell of a Protected Cell Company has been dissolved under sub-paragraph (4), the Protected Cell Company may not undertake business or incur liabilities in respect of that cell.

10. Remuneration of Cell Liquidator

The remuneration of a Cell Liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from—

- (a) the cellular assets attributable to the cell in respect of which the Cell Liquidator was appointed; and
- (b) to the extent that these may be insufficient, from the non-cellular assets of the Protected Cell Company,

but not from any of the cellular assets attributable to any other cell of the Protected Cell Company.

SCHEDULE 12

REMUNERATION

Remuneration in administration, winding-up and in relation to a Deed of Company Arrangement

1. Application of Schedule

- (1) This Schedule applies to the remuneration of—
 - (a) administrators;
 - (b) liquidators in creditors' voluntary windings up or windings up by the Court; and
 - (c) liquidators in members' voluntary windings up where expressly specified (but not otherwise).
- (2) The paragraphs of this Schedule which by virtue of sub-paragraph 1(c) apply in members' voluntary windings up are paragraphs—
 - (a) 2 (*Remuneration: principles*);
 - (b) 3(5) to (8) and (10) (*Remuneration: procedure for initial determination*);
 - (c) 5(1), (6) and (7) (*Remuneration: recourse by administrator or liquidator to the Court*);
 - (d) 7 (*Remuneration: new administrator or liquidator*);
 - (e) 8 (*Remuneration: apportionment of set fees*);
 - (f) 9(1)(c), (2), (3), (4) and (5) to (8) (*Creditors' or members' claim that remuneration is, or other expenses are, excessive*); and
 - (g) 10 (*Remuneration in winding-up where assets realised on behalf of charge holder*).
- (3) This Schedule does not apply to the remuneration of provisional liquidators.

2. Remuneration: principles

- (1) An administrator or liquidator (including in a members' voluntary winding-up) is entitled to receive remuneration for services as Office-holder.
- (2) The basis of remuneration must be fixed—
 - (a) as a percentage of the value of—
 - (i) the property with which the administrator has to deal; or
 - (ii) the assets which are realised, distributed or both realised and distributed by the administrator or liquidator;
 - (b) by reference to the time properly given by the Office-holder and the Office-holder's staff in attending to matters arising in the administration, in connection with the Deed of Company Arrangement or winding-up; or
 - (c) as a set amount;or any combination of them; and different bases may be fixed in respect of different things done by the Office-holder.

- (3) Where the basis of remuneration is fixed as in sub-paragraph (2)(a), different percentages may be fixed in respect of different things done by the Office-holder.
- (4) The matters to be determined in fixing the basis of remuneration are—
 - (a) which of the bases set out in sub-paragraph (2) are to be fixed and (where appropriate) in what combination;
 - (b) the percentage or percentages (if any) to be fixed under sub-paragraphs (2)(a) and (3);
 - (c) the amount (if any) to be set under sub-paragraph (2)(c).
- (5) In arriving at that determination, regard must be had to the following matters—
 - (a) the complexity (or otherwise) of the case;
 - (b) any respects in which, in connection with the Company's affairs, there falls on the Office-holder, any responsibility of an exceptional kind or degree;
 - (c) the effectiveness with which the Office-holder appears to be carrying out, or to have carried out, the Office-holder's duties as such; and
 - (d) the value and nature of the property with which the Office-holder has to deal.
- (6) If the Office-holder is a lawyer and employs the firm, or any partner in it, to act on behalf of the Company, profit costs must not be paid unless expressly authorised in the determination.

3. Remuneration: procedure for initial determination

- (1) It is for the creditors' committee, subject to sub-paragraph (4), to determine the basis of remuneration in an administration or winding-up of a Company (except in a members' voluntary winding-up).
- (2) (a) If there is no creditors' committee in an administration or winding-up, or the creditors' committee does not make the requisite determination, and—
 - (i) in an administration, the case does not fall within sub-paragraph (3); or
 - (ii) in a creditors' voluntary winding-up or a winding-up by the Court, subject to sub-paragraph (4),

the basis of remuneration may be fixed by a resolution of a meeting of creditors.
- (b) Where there is a Deed of Company Arrangement, the basis of remuneration may be fixed by a resolution of a meeting of creditors.
- (3) If the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*) and there is no creditors' committee, or the creditors' committee does not make the requisite determination, the basis of the administrator's remuneration may be fixed by the approval of—
 - (a) each secured creditor of the Company; or
 - (b) if the administrator has made or intends to make a distribution to preferential creditors—
 - (i) each secured creditor of the Company; and

- (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Where—

- (a) a Company which is in administration moves into winding-up under Section 122(1) (*Moving creditors' voluntary liquidation*) and the administrator becomes the liquidator; or
- (b) a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect and the Court under Section 210(3) (*Appointment of provisional liquidator or of liquidator following administration*) appoints as liquidator the person whose appointment as administrator has ceased to have effect,

the basis of remuneration fixed under this paragraph for the administrator is treated as having been fixed for the liquidator, and sub-paragraphs (1) and (2) do not apply.

- (5) In a members' voluntary winding-up, it is for the Company in general meeting to determine the basis of remuneration.
- (6) If not fixed as above, the basis of the administrator's remuneration or the liquidator's remuneration in a voluntary winding-up (including a members' voluntary winding-up) must, on application by the administrator or liquidator, be fixed by the Court.
- (7) An application under sub-paragraph (6) may not be made by the administrator or liquidator without having first sought fixing of the basis in accordance with sub-paragraph (1), (2), (3) or (5) (as the case may be).
- (8) In a members' voluntary winding-up, the liquidator must deliver at least 14 days' notice of an application under sub-paragraph (6) to the Company's contributories, or such one or more of them as the Court may direct; and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.
- (9) If, in a winding-up by the Court, the basis of remuneration is not fixed as above after the liquidator has requested the creditors to fix the basis in accordance with sub-paragraph (2) or in any event within 18 months after the date of the liquidator's appointment, the liquidator is entitled to such sum as is arrived at (subject to sub-paragraph (10)) by—

- (a) applying the following realisation scale to the moneys received by the liquidator from the realisation of the assets of the Company (after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the Company):

On the first \$6,000	20%
On the next \$6,000	15%
On the next \$110,000	10%
On all further sums realised	5%

- (b) adding to the sum arrived at under subparagraph (a) such sum as is arrived at by applying the following distribution scale to the value of assets distributed to

creditors of the Company (including payments made in respect of preferential debts) and to contributories:

On the first \$6,000	10%
On the next \$6,000	7.5%
On the next \$110,000	5%
On all further sums distributed	2.5%

- (10) Where a number of persons are appointed as administrators or joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned and any dispute arising between them may be referred—
- (a) to the Court, for settlement by order; or
 - (b) to the creditors' committee, a meeting of creditors or (in a members' voluntary winding-up) the Company in general meeting, for settlement by resolution.

4. Remuneration: recourse by administrator or liquidator to creditors

- (1) If the basis of—
- (a) the administrator's remuneration has been fixed by the creditors' committee;
 - (b) the liquidator's remuneration has been fixed by the creditors' committee; or
 - (c) the liquidator's remuneration had, in a case falling within paragraph 3 (*Remuneration: procedure for initial determination*), been fixed by the creditors' committee in a preceding administration and the administrator had not subsequently requested an increase under this paragraph,

and the Office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate, the Office-holder may request that the amount be increased or the basis changed by resolution of the creditors.

- (2) If the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*), the basis of his remuneration has been fixed by the creditors' committee, and the administrator of the Company considers an amount fixed to be insufficient or basis fixed to be inappropriate, the administrator of the Company may request that the amount be increased or the basis changed by the approval of—
- (a) each secured creditor of the Company; or
 - (b) if the administrator of the Company has made or intends to make a distribution to preferential creditors—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

5. Remuneration: recourse by administrator or liquidator to the Court

- (1) If the basis of—
- (a) the remuneration of an administrator has been fixed—
 - (i) by the creditors' committee, the administrator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or
 - (ii) by resolution of the creditors; or
 - (b) the liquidator's remuneration has been fixed—
 - (i) by the creditors' committee, the liquidator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it;
 - (ii) by resolution of the creditors;
 - (iii) under paragraph 3(4) or (9) (*Remuneration: procedure for initial determination*) of this Schedule; or
 - (iv) in a members' voluntary winding-up, by the Company in general meeting,

and the Office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate, the Office-holder may apply to the Court for an order increasing the amount or changing the basis.

- (2) If the administrator of a Company has made a statement under Section 61(6)(b) (*Requirement for initial creditors' meeting*), the basis of his remuneration has been fixed by the approval of creditors in accordance with paragraph 4(2) (*Remuneration: recourse by administrator or liquidator to creditors*) of this Schedule and he considers an amount fixed to be insufficient or basis fixed to be inappropriate, he may apply to the Court for an order increasing the amount or changing the basis.
- (3) Where an application is made under sub-paragraph (2), the administrator of a Company must deliver notice to each of the creditors whose approval was sought under paragraph 4(2) (*Remuneration: recourse by administrator or liquidator to creditors*) of this Schedule.
- (4) The administrator of a Company or liquidator (except in a members' voluntary winding-up) must deliver at least 14 days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.
- (5) If there is no creditors' committee or in the case of an administrator of a Deed of Company Arrangement, the Office-holder's notice of the application must (except in a members' voluntary winding-up) be delivered to such one or more of the Company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.
- (6) In a members' voluntary winding-up, the liquidator must deliver at least 14 days' notice of the application to the Company's contributories, or such one or more of them as the Court may direct and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

- (7) The Court may, if it appears to be a proper case (including in a members' voluntary winding-up), order the costs of the Office-holder's application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented, to be paid as an expense of the administration or liquidation or an expense for the purposes of the Deed of Company Arrangement, as the case may be.

6. Remuneration: review at request of administrator or liquidator

- (1) Where, after the basis of the Office-holder's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the Office-holder may request that it be changed.
- (2) The request must be made—
- (a) where the creditors' committee fixed the basis, to the creditors' committee;
 - (b) where the creditors fixed the basis, to the creditors;
 - (c) where the Court fixed the basis, by application to the Court; and
 - (d) where, in a winding-up, the remuneration was determined under paragraph 3(9) (*Remuneration: procedure for initial determination*) of this Schedule, to the Liquidation Committee or creditors' committee if there is one and otherwise to the creditors;

and the preceding provisions of this Schedule apply as appropriate.

- (3) Where paragraph 4 (*Remuneration: recourse by administrator or liquidator to creditors*) is applied in accordance with sub-paragraph (2), ignore the words in paragraph 4(1)(c) (*Remuneration: recourse by administrator or liquidator to creditors*), "and the administrator had not subsequently requested an increase under this paragraph".
- (4) Any change in the basis for remuneration applies from the date of the request under sub-paragraph (2) and not for any earlier period.

7. Remuneration: new administrator or liquidator

If a new administrator or liquidator (including in a members' voluntary winding-up) is appointed in place of another, any determination, resolution or Court order in effect under the preceding provisions of this Schedule immediately before the former Office-holder ceased to hold office continues to apply in relation to the remuneration of the new Office-holder until a further determination, resolution or Court order is made in accordance with those provisions.

8. Remuneration: apportionment of set fees

- (1) In a case (including in a members' voluntary winding-up) in which the basis of the Office-holder's remuneration is a set amount under paragraph 2(2)(c) (*Remuneration: principles*) of this Schedule and the former Office-holder ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former Office-holder or the former Office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

- (2) Application may be made—
- (a) by the former Office-holder or the former Office-holder's personal representative within the period of 28 days beginning with the date upon which the former Office-holder ceased to hold office; or
 - (b) by the Office-holder for the time being in office if the former Office-holder or the former Office-holder's personal representative has not applied by the end of that period.
- (3) Application must be made—
- (a) where the creditors' committee fixed the basis, to the creditors' committee;
 - (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;
 - (c) where the Company in general meeting fixed the basis, to the Company for a resolution determining the portion; or
 - (d) where the Court fixed the basis, to the Court for an order determining the portion.
- (4) The applicant must deliver a copy of the application to the Office-holder for the time being or to the former Office-holder or the former Office-holder's personal representative, as the case may be ("**the recipient**").
- (5) The recipient may, within 21 days of receipt of the copy of the application, deliver notice of intent to—
- (a) make representations to—
 - (i) the creditors' committee;
 - (ii) the creditors; or
 - (iii) the Company in general meeting; or
 - (b) appear or be represented before the Court, as the case may be.
- (6) No determination may be made upon the application until expiry of the 21 days referred to in sub-paragraph (5) or, if the recipient does deliver notice of intent in accordance with that sub-paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.
- (7) If the former Office-holder or the former Office-holder's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors is insufficient, that person may apply—
- (a) in the case of a determination by the creditors' committee, to the creditors for a resolution increasing the portion; or
 - (b) in the case of a resolution of—
 - (i) the creditors (whether under sub-paragraph (3)(b) or under sub-paragraph (7)(a)); or
 - (ii) the Company in general meeting,to the Court for an order increasing the portion

and sub-paragraphs (4) to (6) apply as appropriate.

9. Creditors' or members' claim that remuneration is, or other expenses are, excessive

- (1) The following may apply to the Court for one or more of the orders in sub-paragraph (8)—
 - (a) a secured creditor;
 - (b) an unsecured creditor with either—
 - (i) the concurrence of at least ten (10)% in value of the unsecured creditors (including that creditor); or
 - (ii) the permission of the Court; or
 - (c) in a members' voluntary winding-up—
 - (i) members of the Company with at least ten (10)% of the total voting rights of all the members having the right to vote at general meetings of the Company; or
 - (ii) a member of the Company with the permission of the Court.
- (2) An application may be made on the grounds that—
 - (a) the remuneration charged by the Office-holder;
 - (b) the basis fixed for the Office-holder's remuneration under paragraphs 2 (*Remuneration: principles*) and 3 (*Remuneration: procedure for initial determination*) of this Schedule; or
 - (c) expenses incurred by the Office-holder,is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (2)(b), inappropriate.
- (3) The application by a creditor or member must be made no later than eight weeks (or, in a case falling within Section 240 (*Removal or resignation of liquidator*), four weeks) after receipt by the applicant of the progress report, or the final account or report under Section 182 (*Final meeting prior to dissolution*) or Section 213 (*Duty to summon final meeting*) (as applicable) which first reports the charging of the remuneration or the incurring of the expenses in question ("**the relevant report**").
- (4) If the Court thinks that no sufficient cause is shown for a reduction, it must deliver to the applicant notice to that effect; and—
 - (a) if, within five business days of delivery of that notice, the applicant applies to the Court to fix a venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court will do so; but
 - (b) if the applicant does not deliver notice in accordance with sub-paragraph (4)(a), the Court may dismiss the application without a hearing.
- (5) The Court must fix a venue for the application to be heard, and deliver notice to the applicant if the application is not dismissed—
 - (a) after a hearing under sub-paragraph (4)(a); or
 - (b) without a hearing in accordance with sub-paragraph (4)(b).

- (6) The venue must be fixed for not less than 28 days after delivery to the applicant of the notice under sub-paragraph (4).
- (7) The applicant must, at least 14 days before the hearing, deliver to the Office-holder a notice stating the venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.
- (8) If the Court considers the application to be well-founded, it must make one or more of the following orders—
 - (a) an order reducing the amount of remuneration which the Office-holder is entitled to charge;
 - (b) an order reducing any fixed amount;
 - (c) an order changing the basis of remuneration;
 - (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration, expenses for the purposes of the Deed of Company Arrangement or winding-up expenses; and
 - (e) an order that the administrator or liquidator or the administrator's or liquidator's personal representative pay to the Company the amount of the excess of remuneration or expenses or such part of the excess as the Court may specify,
 and may make any other order that it thinks just; but an order under sub-paragraph (8)(b) or (c) may be made only in respect of periods after the period covered by the relevant report.
- (9) Unless the Court orders otherwise under sub-paragraph (10), the costs of the application must be paid by the applicant, and are not payable as an expense of the administration or the Deed of Company Arrangement or as winding-up expenses.
- (10) The Court may order that the costs may be payable by the applicant, by the respondent or as an expense.

10. Remuneration in winding-up where assets realised on behalf of charge holder

- (1) A liquidator (including in a members' voluntary winding-up) who realises assets on behalf of a secured creditor is entitled to such sum by way of remuneration as is arrived at—
 - (a) in a winding-up where the assets are subject to a charge which when created was a mortgage or a fixed charge, by applying the realisation scale published by the Board to the moneys received by the liquidator in respect of the assets realised (after deducting any sums spent out of money received in carrying on the business of the Company);
 - (b) in a winding-up where the assets realised are subject to a charge which when created was a floating charge, by—
 - (i) applying the realisation scale published by the Board to moneys received by the liquidator from the realisation of those assets (ignoring any sums received which are spent in carrying on the business of the Company); and
 - (ii) adding to the sum arrived at under sub-paragraph (b)(i) such sum as is arrived at by applying the distribution scale published by the Board to

the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts.

- (2) The sum to which the liquidator is entitled must be taken out of the proceeds of the realisation.

11. Voting on remuneration

Where a resolution is proposed in a creditors' voluntary winding-up or a compulsory winding-up which affects a person in relation to that person's remuneration or conduct as liquidator, that person and the partners and employees of that person must not vote on it, whether as creditor, contributory, proxy-holder or corporate representative, unless the proxy specifically directs the proxy-holder to vote in that way.

SCHEDULE 13

MODIFICATIONS TO THE INSOLVENCY REGULATIONS FOR LIMITED LIABILITY PARTNERSHIPS

Provisions	Modifications
Section 1(3)(c) (<i>Administration</i>)	For “Company or its Directors” substitute “Limited Liability Partnership”
Section 5(3)(a) (<i>General restrictions</i>)	For “resolution for voluntary winding up” substitute “determination to wind up voluntarily”
Section 8(1)(b) (<i>Administration application</i>)	Omit
Section 29(2) (<i>Power to appoint</i>)	Omit
Section 32(2) (<i>Notice of intention to appoint</i>)	Omit “or a record of the decision of the Directors (where the Directors intend to make the appointment)”
Section 33(4) (<i>Notice of appointment</i>)	For “Directors of the Company” substitute “Limited Liability Partnership”
Section 44(2) (<i>Moratorium on Insolvency Proceedings</i>)	For “resolution may be passed for the winding up of” substitute “determination to wind up voluntarily may be made by”
Section 57(1)(d) (<i>Administrator’s statement of proposals</i>)	Omit
Section 66(1)(d) (<i>Contents of the administrator’s revised proposals</i>)	Omit
Section 76(4) (<i>Effect of Deed of Company Arrangement on creditors</i>)	For “Section 117 (<i>The members of a company</i>) of the Companies Regulations” substitute “Section 3 (<i>Members</i>) of the Limited Liability Partnership Regulations 2015”
Section 81(1) (<i>Transfer of shares</i>)	For “shares in” substitute “interests in the property of”, for “shares” substitute “interests”
Section 94(6)(b) (<i>Deed progress reports</i>)	In Section 94(6)(b) the reference to Section 470 (<i>Auditor’s general right to information</i>) shall be read in respect of a Limited Liability Partnership as such provision is amended pursuant to the Limited Liability Partnership Rules 2015
Section 95(5) (<i>General powers</i>)	For Section 95(5) substitute “(5) The administrator of a Limited Liability Partnership has power to prevent any person from taking part in the management of the business of the Limited Liability Partnership and to appoint any person to be a manager of that business.”
Section 122(5)(b) (<i>Moving to creditors’ voluntary liquidation</i>)	For “resolution for voluntary winding-up” substitute “determination to wind-up voluntarily”

Section 122(7)(b) (<i>Moving to creditors' voluntary liquidation</i>)	For "passing of the resolution for voluntary winding-up" substitute "determination to wind-up voluntarily"
Section 122(7)(e) (<i>Moving to creditors' voluntary liquidation</i>)	For "passing of the resolution for voluntary winding-up" substitute "determination to wind-up voluntarily"
Section 128(2)(d) (<i>Resignation of administrator</i>)	Omit
Section 134(2)(d) (<i>Administrator ceasing to be registered</i>)	Omit
Section 137(2)(c), (7) and (8) (<i>Supplying vacancy in office of administrator</i>)	Omit
Section 137(9) (<i>Supplying vacancy in office of administrator</i>)	For "(5) or (7)" substitute "or (5)"
Section 141(1)(a) (<i>Substitution of administrator appointed by Company or Directors: creditors' meeting</i>)	Omit "or Directors"
Section 147(5) (<i>Joint and concurrent administrators</i>)	Omit
Section 150 (<i>Majority decision of Directors</i>)	Omit
Section 174(1) (<i>Circumstances in which a Company may be wound up voluntarily</i>)	For Section 174(1) substitute the following: "(1) A Limited Liability Partnership may be wound-up voluntarily when it determines that it is to be wound-up voluntarily"
Section 174(2) (<i>Circumstances in which a Company may be wound up voluntarily</i>)	For "passes a resolution for voluntary winding-up" substitute "determines that it is to be wound-up voluntarily", for "passing of such resolution" substitute "making of the determination" and for "resolution" where it appears for the third time substitute "determination"
Section 175(1) (<i>Declaration of solvency</i>)	For "the directors (or, in the case of a Company having more than two Directors, the majority of them) may at a meeting of the board of Directors make a declaration in a form prescribed by the Board in rules made by the Board" substitute "the members of the Limited Liability Partnership may make a declaration."
Section 175(2) (<i>Declaration of solvency</i>)	For the existing subsection, substitute the following: "(2) Such a declaration must be made within the five (5) weeks immediately preceding the date when the Limited Liability Partnership determined that it be wound-up voluntarily or on that date but before the making of the determination."

Section 175(3) (<i>Declaration of solvency</i>)	For “a Director” substitute “the members”
Section 175(4) (<i>Declaration of solvency</i>)	For “in pursuance of a resolution passed” substitute “voluntarily”
Section 178 (<i>Appointment of liquidator</i>)	Omit “at a general meeting”
Section 179 (<i>Directors’ powers</i>)	Substitute the following: “On the appointment of a liquidator the powers of the members of the Limited Liability Partnership shall cease except to the extent that a meeting of the members of the Limited Liability Partnership summoned for the purpose or the liquidator sanctions their continuance.”
Section 180 (<i>Vacancy in office of liquidator</i>)	For “the Company at a general meeting” substitute “a meeting of the members of the Limited Liability Partnership called for the purpose” and “a general meeting” substitute “a meeting of the members of the Limited Liability Partnership”
Section 182(1) (<i>Final meeting prior to dissolution</i>)	For “a general meeting” substitute “a meeting of the members”
Section 183(1) (<i>Effect of Company’s insolvency</i>)	For “Directors” substitute “members”
Section 184(a) (<i>Conversion to creditors’ voluntary winding-up</i>)	For “Directors” substitute “members”
Section 184(b) (<i>Conversion to creditors’ voluntary winding -up</i>)	For “general meeting” substitute “meeting of the members”
Section 186(1) (<i>Meetings of members and creditors</i>)	Substitute the following: (1) “The Limited Liability Partnership shall cause a meeting of its creditors to be summoned for a day not later than the 14 th day after the day on which the Limited Liability Partnership determines that it be wound-up voluntarily.”
Section 186(2) and (3) (<i>Meeting of members and creditors</i>)	For “Directors” substitute “members”
Section 187(1) (<i>Appointment of liquidator</i>)	For “The creditors and the Company at their respective meetings mentioned in Section 186 (<i>Meetings of members and creditors</i>)” substitute “The creditors at their meeting mentioned in Section 186 (<i>Meetings of members and creditors</i>) and the Limited Liability Partnership”
Section 188 (<i>Directors’ powers</i>)	Substitute the following: “On the appointment of a liquidator the powers of the members of the Limited Liability Partnership shall cease, except so far as the Liquidation Committee (or if there is

	no such Liquidation Committee, the creditors) sanction their continuance.”
Section 191(1) (<i>Final meeting prior to dissolution</i>)	For “a general meeting” substitute “a meeting of the members”
Section 192(1) (<i>Notice of resolution to wind up</i>)	For “passed a resolution for winding-up” substitute “determined that it shall be wound up voluntarily”, for “passing of the resolution” substitute “determination”, for “resolution” substitute “determination”
Section 193 (<i>Commencement of winding-up</i>)	Substitute the following new Section - “A voluntary winding-up is deemed to commence at the time when the Limited Liability Partnership determines that it be wound up voluntarily”
Section 196 (<i>Avoidance of share transfers after winding-up resolution</i>)	For “shares” substitute “the interests of any member in the property of the Limited Liability Partnership”
Section 198A (<i>Acceptance of shares, etc. as consideration for sale of company property</i>)	<p>For the existing Section substitute the following:</p> <p>“198A. Acceptance of shares, etc. as consideration for sale of Limited Liability Partnership property</p> <p>(1) This Section applies, in the case of a Limited Liability Partnership proposed to be, or being, wound up voluntarily, where the whole or part of the Limited Liability Partnership’s business or property is proposed to be transferred or sold to another company whether or not it is a Company within the meaning of the Companies Regulations 2020 (“the transferee company”) or to a Limited Liability Partnership (“the transferee limited liability partnership”).</p> <p>(2) With the requisite sanction, the liquidator of the Limited Liability Partnership being, or proposed to be, wound up (“the transferor limited liability partnership”) may receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company or the transferee limited liability partnership for distribution among the members of the transferor limited liability partnership.</p> <p>(3) The sanction required under subsection (2) is -</p> <p>(a) in the case of a members’ voluntary winding up, that of a determination of the Limited Liability Partnership at a meeting of the members of the Limited Liability Partnership conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and</p>

	<p>(b) in the case of a creditor's voluntary winding up, that of either court or the Liquidation Committee.</p> <p>(4) Alternatively to subsection (2), the liquidator may (with the sanction) enter into any other arrangement whereby the members of the transferor limited liability partnership may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits, or receive any other benefit from the transferee company or the transferee limited liability partnership.</p>
	<p>(5) A sale or arrangement in pursuance of this Section is binding on members of the transferor limited liability partnership.</p> <p>(6) A determination by the Limited Liability Partnership is not invalid for the purposes of this Section by reason that it is made before or concurrently with a determination by the Limited Liability Partnership that it be wound up voluntarily or for appointing liquidators; but, if an order is made within a year for winding up the Limited Liability Partnership by the Court, the determination by the Limited Liability Partnership is not valid unless sanctioned by the Court.</p>
	<p>(7) If a determination of the Limited Liability Partnership has provided the sanction requisite for the liquidator under this Section, a member of the transferor limited liability partnership who did not vote in favour of providing the sanction required for the liquidator under this Section may express his dissent from it in writing addressed to the liquidator and left at the registered office of the Limited Liability Partnership within 7 days after the date on which that sanction was given, and require the liquidator either to abstain from carrying the arrangement so sanctioned into effect or to purchase his interest at a price to be determined by agreement or arbitration under this Section.</p> <p>(8) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the Limited Liability Partnership is dissolved and be raised by the liquidator in such manner as may be determined by the Limited Liability Partnership."</p>
Section 199(a) (<i>Circumstances in which a Company may be wound up by the Court</i>)	For "has by Special Resolution resolved" substitute "has determined"
Section 199(c) (<i>Circumstances in which a</i>	Omit "or"

<i>Company may be wound up by the Court)</i>	
Section 199(e) and (f) (<i>Circumstances in which a Company may be wound up by the Court</i>)	Add the following new paragraphs: “(e) the Limited Liability Partnership does not commence its business within a year from its incorporation or suspends its business for a whole year; or (f) the number of members is reduced below two.”
Section 202(2) (<i>Application for winding-up</i>)	Omit “either”
Section 202(2)(a) (<i>Application for winding-up</i>)	Omit
Section 208(1) (<i>Commencement of winding-up</i>)	For “a resolution has been passed” substitute “a determination has been made” and for “the passing of the resolution” substitute “that determination”
Section 209(2)(b) (<i>Consequences of winding-up order</i>)	For “any transfer of shares” substitute “any transfer by a member of the Limited Liability Partnership of his interest in the property of the Limited Liability Partnership”
Section 215(6)(a) (<i>Property of the Company</i>)	For “resolution” substitute “determination”
Section 217(8) (<i>Powers of liquidator</i>)	For “a resolution passed” substitute “determination made”
Section 220(1)(a) (<i>Settling list of contributories, debts and calls</i>)	Omit “with power to rectify the register of members in all cases where rectification is required”
Section 221 (<i>Liability to contribute of past and present members</i>)	Substitute the following - “When a Limited Liability Partnership is wound up every present and past member of the Limited Liability Partnership who has agreed with the other members or with the Limited Liability Partnership that he will, in circumstances which have arisen, be liable to contribute to the assets of the Limited Liability Partnership in the event that the Limited Liability Partnership goes into liquidation is liable, to the extent that he has so agreed, to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves. However, a past member shall only be liable if the obligation arising from such agreement survived his ceasing to be a member of the Limited Liability Partnership.”
Section 222 (<i>Limited Company formerly unlimited</i>) and 223 (<i>Unlimited Company formerly limited</i>)	Omit.

Section 233 (<i>Statement of Company's affairs by Directors</i>)	For "Director" substitute "member" and "Directors" substitute "members"
Section 242(4) (<i>Meetings to ascertain wishes of creditors or contributories</i>)	Insert a new subsection (4) as follows - "(4) Meetings of members of a Limited Liability Partnership shall be convened and held subject to Part 13 (<i>Limited Liability Partnership Meetings</i>) of Schedule 6 (<i>Meetings and Correspondence</i>)".
Section 244(1) (<i>Fraud in anticipation of winding-up or insolvent administration</i>)	For "passes a resolution for voluntary winding-up" substitute "makes a determination that it be wound-up voluntarily".
Section 245(1) (<i>Transactions in fraud of creditors</i>)	For "passes a resolution for voluntary winding-up" substitute "makes a determination that it be wound-up voluntarily".
After Section 252 (<i>Wrongful trading</i>)	Insert the following new Section 252A as follows - "252A Adjustment of withdrawals" (1) This Section has effect in relation to a person who is or has been a member of a Limited Liability Partnership where, in the course of winding up of that Limited Liability Partnership, it appears that subsection (2) of this
	(2) Section applies in relation to that person. (2) This subsection applies in relation to a person if – (a) within the period of two years ending with the commencement of the winding up, he was a member of the Limited Liability Partnership who withdrew property of the Limited Liability Partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the Limited Liability Partnership or any other withdrawal of property, and (b) it is proved by the liquidator to the satisfaction of the Court that at the time of the withdrawal he knew or had reasonable ground for believing that the Limited Liability Partnership – (i) was at the time of the withdrawal unable to pay its debts within the meaning of Section 200 (<i>Definition of inability to pay debts</i>), or
	(ii) would become so unable to pay its debts after the assets of the Limited Liability Partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made.

	<p>(3) Where this Section has effect in relation to any person 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 Limited Liability Partnership's assets as the court thinks proper.</p> <p>(4) The Court shall not make a declaration in relation to any person the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by that person within the period of two years referred to in that subsection.</p> <p>(5) The Court shall not make a declaration under this Section with respect to any person unless that person knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the Limited Liability Partnership would avoid going into insolvent liquidation.</p> <p>(6) For the purposes of subsection (5) the facts which a member ought to know or ascertain and the conclusions which he ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both:</p> <p>(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 member in relation to the Limited Liability Partnership, and</p> <p>(b) the general knowledge, skill and experience that that member has.</p>
	<p>(7) For the purposes of this section a Limited Liability Partnership 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.</p> <p>(8) In this section "member" includes a shadow member.</p> <p>(9) This section is without prejudice to Section 252."</p>
Section 253 (<i>Proceedings under Sections 251 and 252</i>)	Add after "Section 252 (<i>Wrongful trading</i>)" the following - "or Section 252A (<i>Adjustment of withdrawals</i>)"
Section 255(2)(a) (<i>Duty to cooperate with Office - holder</i>)	Omit "secretary of"
Section 255(2)(d) (<i>Duty to cooperate with Office-holder</i>)	Omit "or secretary of"

Section 256 (<i>Inquiry into Company's dealings</i>)	Omit "or secretary"
Section 298 (<i>Defined Terms</i>) (definition of "Connected Person")	Replace the existing definition of Connected Person with the following - <p>“Connected Person” means a person is connected with a Company (including a Limited Liability Partnership) if -</p> <ul style="list-style-type: none"> (a) he is a Director or shadow director of the a Company or an Associate of such a Director or shadow director (including a member or shadow member of a Limited Liability Partnership or an Associate of such a member or shadow member); (b) he is an Associate of the Company or of the Limited Liability Partnership; (c) he is an employee of the Company or of the Limited Liability Partnership; or (d) he is a trustee of a trust and the Company or the Limited Liability Partnership has an interest in the trust property or vice versa.”
Section 298 (<i>Defined Terms</i>) (definition of “designated member”)	Insert a new definition of “designated member” as follows - “ designated member ” has the same meaning as it has in the Limited Liability Partnership Regulations 2015.”
Section 298 (<i>Defined Terms</i>) (definition of “Limited Liability Partnership”)	Replace the existing definition of Limited Liability Partnership with the following - <p>“Limited Liability Partnership” means a limited liability partnership registered under the Limited Liability Partnerships Regulations 2015.”</p>
Section 298 (<i>Defined Terms</i>) (definition of “Limited Liability Partnerships Regulations”)	Replace the existing definition of Limited Liability Partnership with the following - <p>“Limited Liability Partnerships Regulations 2015” means the Limited Liability Partnerships Regulations 2015, issued by the Board”.</p>
Section 298 (<i>Defined Terms</i>) (definition of “member”)	Replace the existing definition of member with the following - “ member ” means a member of a Limited Liability Partnership.”
Section 298 (<i>Defined Terms</i>) (definition of “shadow member”)	Insert a new definition of “shadow member” as follows - <p>“shadow member”, in relation to a Limited Liability Partnership, means a person in accordance with whose directions or instructions the members of the Limited Liability Partnership are accustomed to act (but so that a person is not deemed a shadow member of a Limited Liability Partnership by reason only that members of the Limited Liability Partnership act on advice given by him in a professional capacity).”</p>
Section 299(2) (<i>Meaning of “liability”, “into liquidation” and “into insolvent liquidation” and “in</i>	For “passes a resolution for voluntary winding-up” substitute “makes a determination that it be wound up voluntarily” and for “passing such a resolution” substitute “making such a determination”

<i>administration”, “enters administration” and “enters insolvent administration”)</i>	
Section 300(3A) (<i>Meaning of “Associate”</i>)	Insert a new subsection (3A) as follows - “(3A) A member of a Limited Liability Partnership is an Associate of that Limited Liability Partnership and of every other member of that Limited Liability Partnership and of the spouse (including former spouse) or relative of every other member of that Limited Liability Partnership.”
Section 300(10) (<i>Meaning of “Associate”</i>)	Substitute for subsection (10) the following- “(10) in this Section “Company” includes any body corporate (whether incorporated in the Abu Dhabi Global Market or elsewhere); and references to Directors and other officers of a Company and to voting power at any general meeting of a Company have effect with any necessary modifications.”
Schedule 2, paragraph (19) (<i>Powers of the Administrator</i>)	For paragraph (19) substitute the following - “(19) Power to enforce any rights the Limited Liability Partnership has against the members under the terms of the Limited Liability Partnership Agreement.”
Schedule 3, paragraph (18) (<i>Powers of the Administrative Receiver</i>)	For paragraph (18) substitute the following – “(19) Power to enforce any rights the Limited Liability Partnership has against the members under the terms of the Limited Liability Partnership Agreement.”
Schedule 6, Part 9 (<i>Contributories’ Voting Rights and Majorities</i>)	For “general meeting” substitute “meeting of the members” and for “resolution is passed” substitute “determination made”
Schedule 6, Part 13 (<i>Meetings and Correspondence</i>)	Insert a new Part 13 as follows - “PART 13 LIMITED LIABILITY PARTNERSHIP MEETINGS 48. Limited Liability Partnership meetings (general) Unless these regulations provide otherwise, a meeting of the members of the Limited Liability Partnership, must be called and conducted, and records of the meeting must be kept in accordance with the Limited Liability Partnership Agreement and the laws of the Abu Dhabi Global Market, including any applicable provisions in or made under the Limited Liability Partnership Regulations 2015. The quorum required for a meeting of the members of the Limited Liability Partnership shall be any quorum required by the Limited Liability Partnership Agreement for meetings of members of the Limited Liability Partnership and if no requirement for a quorum has been agreed upon the quorum shall be 2 members.”

SCHEDULE 14

CAPE TOWN CONVENTION

TEXT OF CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

Chapter I

Sphere of application and general provisions

Article 1 — Definitions

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;
- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;
- (c) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;

- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “insolvency proceedings” means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) “interested persons” means:
 - (i) the debtor;
 - (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
 - (iii) any other person having rights in or over the object;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);
- (o) “international interest” means an interest held by a creditor to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

- (t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) “ object” means an object of a category to which Article 2 applies;
- (v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (aa) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
- (bb) “registered” means registered in the International Registry pursuant to Chapter V;
- (cc) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);

- (ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

Article 2 — The international interest

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:
 - (a) granted by the chargor under a security agreement;
 - (b) vested in a person who is the conditional seller under a title reservation agreement; or
 - (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).
3. The categories referred to in the preceding paragraphs are:
 - (a) airframes, aircraft engines and helicopters;
 - (b) railway rolling stock; and
 - (c) space assets.
4. The applicable law determines whether an interest to which paragraph 2 applies falls within subparagraph (a), (b) or (c) of that paragraph.
5. An international interest in an object extends to proceeds of that object.

Article 3 — Sphere of application

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.
2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

Article 4 —Where debtor is situated

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:
 - (a) under the law of which it is incorporated or formed;
 - (b) where it has its registered office or statutory seat;

- (c) where it has its centre of administration; or
- (d) where it has its place of business.

2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5 — Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.
4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

Article 6 — Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail

Chapter II

Constitution of an international interest

Article 7 — Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

Chapter III

Default remedies

Article 8 — Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:
 - (a) take possession or control of any object charged to it;
 - (b) sell or grant a lease of any such object;
 - (c) collect or receive any income or profits arising from the management or use of any such object.
2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.
4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:
 - (a) interested persons specified in Article 1(m)(i) and (ii); and
 - (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.
6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Article 9 — Vesting of object in satisfaction; redemption

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

Article 10 — Remedies of conditional seller or lessor

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 11 — Meaning of default

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.

2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 — Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

Article 13 — Relief pending final determination

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object; and
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or

- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
- 3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.
- 4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 — Procedural requirements

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

Article 15 — Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

Chapter IV

The international registration system

Article 16 — The International Registry

1. An International Registry shall be established for registrations of:
 - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 17 — The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
 - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;

- (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

Chapter V

Other matters relating to registration

Article 18 — Registration requirements

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
- (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
 - (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 —Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20 — Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.

Article 21 — Duration of registration

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Article 22 — Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:
 - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
 - (b) stating that there is no information in the International Registry relating thereto.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 23 — List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non - consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

Article 24 — Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 25 — Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the

registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 — Access to the international registration facilities

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

Chapter VI

Privileges and immunities of the Supervisory Authority and the Registrar

Article 27 — Legal personality; immunity

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.

3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.

(b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated.

4. The assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

Chapter VII

Liability of the Registrar

Article 28 — Liability and financial assurances

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by

using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

Chapter VIII

Effects of an international interest as against third parties

Article 29 — Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.
2. The priority of the first-mentioned interest under the preceding paragraph applies:
 - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
 - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. The buyer of an object acquires its interest in it:
 - (a) subject to an interest registered at the time of its acquisition of that interest; and
 - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. The conditional buyer or lessee acquires its interest in or right over that object:
 - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
 - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30 — Effects of insolvency

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.
2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. Nothing in this Article affects:
- (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

Chapter IX

Assignments of associated rights and international interests;
rights of subrogation

Article 31 — Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
- (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.
5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 32 — Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
- (a) is in writing;
 - (b) enables the associated rights to be identified under the contract from which they arise; and
 - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 — Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
- (b) the notice identifies the associated rights.

2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in this Article shall affect the priority of competing assignments.

Article 34 — Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

Article 35 — Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 — Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding subparagraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37 — Effects of assignor's insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 38 — Subrogation

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

Chapter X

Rights or interests subject to declarations by Contracting States

Article 39 — Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

- (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
- (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 40 — Registrable non-consensual rights or interests

A Contracting State may at any time in a declaration deposited with the Depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

Chapter XI

Application of the Convention to sales

Article 41 — Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

Chapter XII

Jurisdiction

Article 42 — Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 — Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.

2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:

(a) by the courts chosen by the parties; or

(b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Article 44 —Jurisdiction to make orders against the Registrar

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.
4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

Article 45 —Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

Chapter XIII

Relationship with other Conventions

Article 45 bis — Relationship with the *United Nations Convention on the Assignment of Receivables in International Trade*

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

Article 46 — Relationship with the *UNIDROIT Convention on International Financial Leasing*

The Protocol may determine the relationship between this Convention and the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988.

Chapter XIV

Final provisions

Article 47 — Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Article 49 — Entry into force

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:
 - (a) as from the time of entry into force of that Protocol;
 - (b) subject to the terms of that Protocol; and
 - (c) as between States Parties to this Convention and that Protocol.
2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of subparagraphs (a), (b) and (c) of the preceding paragraph.

Article 50 — Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.
2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.
3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that

such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 — Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant nongovernmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 45 *bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of

administration, place of business or habitual residence in a territorial unit to which this Convention applies;

- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53 — Determination of courts

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant “court” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.

Article 54 — Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.
2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

Article 55 — Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56 — Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57 — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 —Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 59 — Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article 60 — Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.

2. For the purposes of Article 1(v) and of determining priority under this Convention:

- (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
- (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in subparagraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 — Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of this Convention and its effectiveness in facilitating the asset based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

SCHEDULE 15

CAPE TOWN CONVENTION - AIRCRAFT PROTOCOL

TEXT OF PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the *Convention on International Interests in Mobile Equipment* (hereinafter referred to as “the Convention”) as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft equipment:

Chapter I

Sphere of application and general provisions

Article I — Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;
 - (b) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:
 - (i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and
 - (ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,and equipment and all data, manuals and records relating thereto;
 - (c) “aircraft objects” means airframes, aircraft engines and helicopters;
 - (d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;
 - (e) “airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:
 - (i) at least eight (8) persons including crew; or
 - (ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

- (f) “authorised party” means the party referred to in Article XIII(3);
- (g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;
- (h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;
- (i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;
- (j) “guarantee contract” means a contract entered into by a person as guarantor;
- (k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (l) “helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
 - (i) at least five (5) persons including crew; or
 - (ii) goods in excess of 450 kilograms,together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;
- (m) “insolvency-related event” means:
 - (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;
- (o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and

(p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

Article II — Application of Convention as regards aircraft objects

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III — Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;

Article 16(1)(a);

Article 19(4);

Article 20(1) (as regards registration of a contract of sale or a prospective sale);

Article 25(2) (as regards a prospective sale); and

Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV — Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.
2. For the purposes of the definition of “internal transaction” in Article 1 of the Convention:
 - (a) an airframe is located in the State of registry of the aircraft of which it is a part;
 - (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and
 - (c) a helicopter is located in its State of registry,at the time of the conclusion of the agreement creating or providing for the interest.
3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

Article V — Formalities, effects and registration of contracts of sale

1. For the purposes of this Protocol, a contract of sale is one which:
 - (a) is in writing;
 - (b) relates to an aircraft object of which the seller has power to dispose; and
 - (c) enables the aircraft object to be identified in conformity with this Protocol.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.
3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article VI — Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII — Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII — Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Chapter II

Default remedies, priorities and assignments

Article IX — Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:
 - (a) procure the de-registration of the aircraft; and
 - (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable deregistration and export request authorisation; and

(b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed deregistration and export to:

(a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and

(b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

Article X — Modification of provisions regarding relief pending final determination

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

"(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom", and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the words "and (e)".

is free from any other interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.

4. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

5. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
6. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

Article XI — Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:
 - (a) the end of the waiting period; and
 - (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.
3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.
7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
8. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after

the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

1. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXX(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) with the applicable law.

2. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

3. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

4. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

5. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII — Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible

with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

Article XIII — De-registration and export request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.
3. The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

Article XIV — Modification of priority provisions

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV — Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after subparagraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI — Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
 - (b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

Chapter III

Registry provisions relating to international interests in aircraft objects

Article XVII — The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.

3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

5. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII — First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX — Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX — Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure

the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Chapter IV

Jurisdiction

Article XXI — Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII —Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

Chapter V

Relationship with other conventions

Article XXIII — Relationship with the *Convention on the International Recognition of Rights in Aircraft*

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV — Relationship with the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*

1. The Convention shall, for a Contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.
2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

Article XXV — Relationship with the *UNIDROIT Convention on International Financial Leasing*

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

Chapter VI

Final provisions

Article XXVI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII — Entry into force

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.
2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

Article XXX — Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article XXXI — Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXIII — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXV — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XXXVI — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.
3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

- (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Annex

**FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST
AUTHORISATION**

Annex referred to in Article XIII

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]^{*1} of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
 - (a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and
 - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

Agreed to and lodged this

[insert date]

By: [insert name of signatory]

Its: [insert title of signatory]

¹ Select the term that reflects the relevant nationality registration criterion.

[insert relevant notational details]

SCHEDULE 16

CAPE TOWN CONVENTION DECLARATIONS

TEXT OF DECLARATIONS LODGED BY THE UNITED ARAB EMIRATES UNDER THE CAPE TOWN CONVENTION AT THE TIME OF THE DEPOSIT OF ITS INSTRUMENT OF ACCESSION

(i) *Form No. 1 (Specific declaration under Article 39(1)(a))*

The United Arab Emirates declares that the following categories of non-consensual right or interest:

- (a) liens in favour of airlines workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the subject object;
- (b) liens in favour of any United Arab Emirates state entity relating to unpaid taxes or other charges since the time of a declared default under a contract to finance or lease the subject object.
- (c) liens in favour of repairers of an object in their possession to the extent of services performed on and value added to the object.

shall have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

(ii) *Form No. 4 (General declaration under Article 39(1)(b))*

The United Arab Emirates declares that nothing in the Convention shall affect its right or that of any entity of that State, any intergovernmental Organization or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to the United Arab Emirates, any such entity, Organization or provider directly relating to the services provided by it in respect of the object.

(iii) *Form No. 6 (Declaration under Article 40)*

The United Arab Emirates declares that the following categories of non-consensual right or interest:

- (a) rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgement;
- (b) liens in favour of workers for unpaid wages arising prior to the time of a declared default under a contract to finance or lease the subject object;
- (c) liens or other rights of a state entity relating to taxes or other unpaid charges arising
- (d) all other non-consensual rights or interests which under the law of the United Arab Emirates could have priority over the rights of secured creditors-

shall be registrable under the Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly.

(iv) *Form No. 10 (General declaration under Article 52)*

The United Arab Emirates declares that the Convention is to apply to all its territorial units.

(v) *Form No. 11 (Declaration under Article 53)*

The United Arab Emirates declares that all primary courts within their respective territorial jurisdictions are the relevant court(s) for the purposes of Article 1 and Chapter XII of the Convention.

(vi) *Form No. 13 (Mandatory declaration under Article 54(2))*

The United Arab Emirates declares that any remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised only with leave of the court.

Declarations lodged by the United Arab Emirates under the Aircraft Protocol

SCHEDULE 17

CAPE TOWN CONVENTION - AIRCRAFT PROTOCOL DECLARATIONS

TEXT OF DECLARATIONS LODGED BY THE UNITED ARAB EMIRATES UNDER THE AIRCRAFT PROTOCOL AT THE TIME OF THE DEPOSIT OF ITS INSTRUMENT OF ACCESSION

- (i) *Form No. 19 (Declaration under Article XXX(1) in respect of Article VIII)*

The United Arab Emirates declares that it will apply Article VIII.

- (ii) *Form No. 21 (Declaration under Article XXX(2) in respect of Article X providing for the application of the entirety of Article X)*

The United Arab Emirates declares that it will apply Article X in its entirety and that the number of working days to be used for the purpose of the time limit laid down in Article X(2) shall be in respect of the remedies specified in Articles 13(1)(a), (b) and (c) of the Convention (preservation of the aircraft objects and their value; possession, control or custody of the aircraft objects; and immobilization of the aircraft objects) not more than ten (10) calendar days and in respect of the remedies specified in Article 13 (1) (d) and (e) of the Convention (lease or management of the aircraft objects and the income thereof and sale and application of proceeds from the aircraft equipment) not more than thirty (30) calendar days.

- (iii) *Form No. 23 (General declaration under Article XXX(3) in respect of Article XI providing for the application of Alternative A in its entirety to all types of insolvency proceeding)*

The United Arab Emirates declares that it will apply Article XI, Alternative A in its entirety to all types of insolvency proceeding and all other insolvency-related events and that waiting period for the purposes of Article XI(3) of that Alternative shall be sixty (60) calendar days.

- (iv) *Form No. 26 (Declaration under Article XXX(I) in respect of Article XII)*

The United Arab Emirates declares that it will apply Article XII.

- (v) *Form No. 27 (Declaration under Article XXX(1) in respect of Article XIII)*

The United Arab Emirates declares that it will apply Article XIII.

- (vi) *Form No. 28 (A) (Declaration under Article XIX(1) providing for the designation of entry points for compulsory use as transmitters of registration information for airframes and helicopters, and for optional use as transmitters of registration information for aircraft engines, to the International Registry).*

The United Arab Emirates declares that the General Civil Aviation Authority ("GCAA"), acting through its Aircraft Registry (Dubai/Abu Dhabi) and/or Ince Al Jallaf & Co.(Dubai) as published by the GCAA, shall be the entry point(s) at which information required for registration in respect of airframes or helicopters to civil aircraft of the United Arab Emirates or aircraft to become a civil aircraft of the United Arab Emirates shall be transmitted, and in respect of aircraft engines may be transmitted, to the International Registry.

- (vii) *Form No. 34 (General declaration under Article XXIX)*

The United Arab Emirates declares that the Aircraft Protocol is to apply to all its territorial units.

Declarations lodged by the United Arab Emirates under the Cape Town Convention