CORPORATE INSOLVENCY AND RESTRUCTURING ACT, 2020 (ACT 1015)

As Amended by

CORPORATE INSOLVENCY AND RESTRUCTURING (AMENDMENT) ACT, 2020 (ACT 1031)1

ARRANGEMENT OF SECTIONS

Section

REPUBLIC OF GHANA

THE ONE THOUSAND AND FIFTEENTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

CORPORATE INSOLVENCY AND RESTRUCTURING ACT, 2020

AN ACT to provide for the administration and official winding-up of insolvent companies and other bodies corporate and for related matters.

DATE OF ASSENT: 30th April, 2020.

PASSED by Parliament and assented to by the President

Preliminary Provisions

Section 1—Purpose of this Act

(1) The purpose of this Act is to provide a legal regime for—

(a) the administration of the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to as much as possible continue in existence as a going concern;

(b) the temporary management of the affairs, business and property of a distressed company;

(c) the placing of a temporary freeze on the rights of creditors and other claimants against a distressed company;

(d) the development and implementation of a restructuring plan which results in a better return for the creditors and shareholders of the company that would result from the immediate winding-up of a distressed company;

(e) the official liquidation of a body corporate;

(f) cross-border insolvency;

(g) the regulation of insolvency services; and

(h) netting agreements.

(2) A company shall be placed in administration or restructuring if—

(a) the company is unable to pay the debts or current obligations of the company as the debts or obligations fall due even if the total assets of the company exceed the total liabilities of the company; or

(b) the company has a negative net worth.

(3) Subsection (1) does not apply to companies carrying on the business of banking, insurance or any other business which is subject to special legislation, except where the special legislation does not provide for a rescue provision.

Section 2—Period of administration

(1) The administration of a company begins when an administrator is appointed.

(2) The administration of a company ends when

(a) a restructuring agreement is executed by the company and the restructuring officer;

(b) the creditors of the company resolve that the administration should end;

(e) the creditors of the company appoint a liquidator by a resolution passed at a watershed meeting; or

(d) any of the circumstances set out in subsection (3) occurs.

(3) The administration of a company may end where

(a) the Court orders for the administration to end because the Court is satisfied that the company is solvent, or that for any other sufficient reason the administration should cease, and the administration ends on the date specified in the order or, if no date is specified, when the order is made;

(b) the convening period expires without a watershed meeting having been held or without an application having been made to extend the period;

(c) an application is made to the Court to extend the convening period, and the application is dealt with without the convening period being extended;

(d) a watershed meeting ends without a resolution that the company execute a restructuring agreement;

(e) the company fails to execute a proposed restructuring agreement within the time permitted by subsection (2) of section 45; or

(f) the Court appoints a liquidator.

(4) A company shall, from the commencement of administration, suspend the business of the company except where the company is required to do so for the beneficial administration of the company.

Appointment of Administrator

Section 3—Appointment of administrator

(1) A person may be appointed as an administrator of a company.

(2) A person shall not be appointed as an administrator of a company if that person is not qualified under section 155 to be an insolvency practitioner.

(3) A person shall not be appointed as an administrator unless—

(a) that person has consented in writing and has not withdrawn the consent at the time of appointment; and

(b) the consent of that person has been filed with the Registrar.

(4) For the purposes of subsections (1), (2) and (3) which relate to the appointment of an administrator. "a person" means a natural person.

(5) An administrator may be appointed by—

(a) the company;

(b) the liquidator, where the company is in liquidation;

(c) a person holding a charge over the whole or substantially the whole of the property of the company or the receiver appointed by that person; or

(d) the Court.

(6) Where a company is already in administration, an administrator may be appointed only by

(a) the creditors, as a replacement administrator for an administrator that the creditors have removed; or

(b) the appointer of the first administrator, if that administrator has died, resigned or become disqualified.

(7) A company may appoint an administrator where the directors resolve that—

(a) the company is insolvent or is likely to become insolvent in the opinion of the directors voting for the resolution; and

(b) an administrator of the company must be appointed.

(8) A company shall not appoint an administrator if the company is already in liquidation.

(9) The private liquidator of a company in a private liquidation may appoint an administrator if the liquidator thinks that the company is insolvent or is likely to become insolvent.

(10) The appointment shall be in writing and shall state the—

(a) date of the appointment; and

(b) the grounds that indicate the likelihood of a company becoming insolvent.

(11) A secured creditor or a receiver appointed by the creditor shall not appoint an administrator where the company is already in liquidation.

(12) The Court may appoint an administrator on the application of a creditor, the liquidator, if the company is in liquidation, the Registrar or where the Court is satisfied that—

(a) the company is or may become insolvent;

(b) the survival of the company and the assets as a going concern are reasonably capable of being achieved in the event of an administrator being appointed;

(c) a more advantageous realisation of the assets of the company and any related company may be achieved than on an immediate winding-up;

(d) the appointment of an administrator may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the company or any related company; or

(e) it is just and equitable to do so.

(13) The appointment of an administrator shall not be revoked, except where the administrator is removed by the Court or by the creditors.

Section 4—Appointment of one or three administrators

(1) One or three persons may be appointed as administrators in any case where this Act provides for the appointment of an administrator.

(2) Where one or three persons are appointed as administrators of a company—

(a) the functions of the administrator may be performed or exercised by a majority of the administrators unless the order, instrument or resolution that appoints the administrators provides otherwise; and

(b) a reference in this Act to an administrator refers to the administrator or administrators as the case requires.

Section 5—Remuneration of administrator

(1) An administrator is entitled, with the approval of the committee of creditors, to charge reasonable remuneration for performing duties and exercising powers as an administrator.

(2) Where there is a disagreement on the remuneration of an administrator, the Court may, on the application of an administrator, an officer of the company, a creditor or a shareholder review or fix the remuneration of the administrator at a level that is reasonable in the circumstances.

Section 6—Vacancy in office of administrator

The office of an administrator becomes vacant where the administrator—

(a) dies;

(b) resigns;

(c) becomes disqualified; or

(d) is removed by the Court or by creditors.

Section 7—Resignation and removal of administrator

(1) An administrator may resign by giving written notice to the company and to the appointer of the administrator.

(2) An administrator may be removed—

(a) by the Court, on the application of a creditor, the liquidator if the company is in liquidation or the Registrar;

(b) by a resolution of creditors passed at the first meeting of the creditors; or

(c) by a resolution of creditors at a meeting convened to consider whether to remove a replacement administrator.

(3) The creditors shall not remove an administrator by a resolution passed at a meeting of creditors unless—

(a) a notice of the meeting to remove the administrator has been given to the—

(i) company, and

(ii) administrator not less than fourteen days before the meeting at which the resolution is to be moved;

(b) the administrator has been given the opportunity to be heard and, if desired, presents a written submission at the meeting;

(e) the resolution also appoints a new administrator; and

(d) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting—

(i) a signed, written consent to act as administrator; and

(ii) a statement of interest.

Section 8—Appointment of administrator to fill vacancy

(1) The appointer of an administrator may appoint a person to fill a vacancy where the office of the administrator becomes vacant—

(a) by the death of the administrator;

(b) through the resignation of the administrator;

(e) on the disqualification of the administrator; or

(d) by removal of the administrator by the Court or creditors.

(2) The directors may, by resolution, appoint an administrator to fill a vacancy.

Section 9—Creditors to consider appointment of replacement administrator

(1) Unless a replacement administrator is appointed by the Court, a replacement administrator shall convene a meeting of the creditors at which the creditors may vote to remove the replacement administrator and appoint another person in place of the replacement administrator.

(2) The meeting shall be held within seven days after the date on which the replacement administrator is appointed.

(3) The replacement administrator shall convene the meeting by—

(a) giving written notice of the meeting to the creditors of the company; and

(b) publishing a notice of the meeting in a daily newspaper of national circulation.

(4) The replacement administrator shall take the steps set out in subsection (3) within two working days before the meeting.

(5) For the purpose of this section, "replacement administrator" means the person who is appointed to fill a vacancy in the office of administrator.

Effect of Appointment

Section 10—Role of administrator

(1) The administrator, in the course of the administration,

(a) shall have control of the business, property and affairs of the company;

(b) is required to investigate the affairs of the company and consider possible ways of salvaging the business of the company in the interests of creditors. employees and shareholders;

(c) shall carry on the business of the company and manage the property and affairs of the company with the object of salvaging the business of the company in the interests of creditors, employees and shareholders;

(d) may terminate or dispose of the whole or part of the business of the company, and may dispose of any of the properties of the company; and

(e) may perform any other function, and exercise any other power, that the company or any of the officers of the company could perform or exercise if the company were not in administration.

(2) The administrator shall file financial statements and report with the Registrar and submit copies to the directors of the company for each of the following periods:

(a) the period of six months or shorter as the administrator may determine with effect from the date on which the administrator was appointed;

(b) each subsequent period of six months during which the administrator holds office; and

(c) the period between the latter period of the type referred to in paragraph (b) and the date on which the administrator vacates office.

(3) The administrator shall file the financial statements and report within twenty-eight days after the end of the period specified in paragraphs (a), (b) or (c) of subsection (2).

(4) The financial statements and report shall be in the prescribed form and shall show—

(a) for each period, the receipts and payments of tile administrator; and

(b) for each period except the first, the aggregate of the receipts and payments of the administrator since the day on which the administrator was appointed.

(5) A payment made, transaction entered into, or any other action taken, in good faith, by or with the consent of the administrator of a company in administration—

(a) is valid and effectual for the purpose of this Act; and

(b) shall not be set aside, if the company is placed in liquidation.

(6) For the purposes of this section, "administrator" includes a restructuring officer.

Section 11—Powers of administrator

(1) An administrator has the power to perform the functions and discharge the duties of an administrator under this Act.

(2) Without limiting subsection (1), the power of the administrator includes the power to

(a) begin, continue, discontinue and defend legal proceedings;

(b) carry on the business of the company to the extent necessary for the administration; and

(c) appoint any other person to act on behalf of the administrator pursuant to paragraph (a).

(3) An administrator is the agent of the company when performing a function or exercising a power under subsection (2).

(4) For purposes of paragraph (a) of subclause (2), an administrator shall sue in the name of the company.

Section 12—Effect on company officers

(1) The appointment of an administrator does not result in the removal of the directors of the company from office.

(2) A director of a company that is in administration shall not exercise a power, perform a function, be responsible for managing the affairs of the company or purport to do so as an officer of the company except—

(a) with the prior, written approval of the administrator; or

(b) as expressly permitted under this Act.

Section 13—Effect on employees

(1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.

(2) The administrator shall pay the wages or salary that has accrued to an employee during the administration of the company as a result of any contract of employment entered into by the company before the appointment of the administrator unless the administrator has given due notice of the termination of the contract within twenty-one days after the appointment of the administrator.

(3) The Court may, on the application of the administrator, extend the period of twenty-one days within which notice of termination is to be given, on terms that the Court considers appropriate.

Section 14—Effect on dealing with property of company

(1) A transaction or dealing by a company in administration or by a person on behalf of the company, that affects the property of the company is void unless the transaction or dealing was entered into—

(a) by the administrator, on behalf of the company;

(b) with the prior written consent of the administrator; or

(c) in pursuance of an order of a Court.

(2) Subsection (1) does not apply to a payment made by a bank—

(a) out of an account kept by the company with the bank;

(b) in good faith and in the ordinary course of the business of the bank; and

(c) on or before the day on which the bank was notified in writing by the administrator that the administration had begun or before the bank had reason to believe that the company was in administration, whichever was earlier.

Section 15—Effect on transfer of shares

(1) Subject to subsections (2) and (3), a person shall not—

(a) transfer a share in a company in administration; or

(b) alter the rights or liabilities of a shareholder of a company in administration.

(2) An administrator may consent to the transfer of a share in a company in administration where the administrator is satisfied that the transfer is in the best interests of the shareholders and creditors of the company.

(3) The Court may make an order for—

(a) the transfer of a share of a company in administration, where the consent of the administrator has been sought and the administrator has refused or failed to respond within fourteen days; or

(b) the alteration of the rights and liabilities of a shareholder in a company in administration.

Section 16—Investigation of affairs of company

The administrator shall within twenty-one days after the administration of a company commences.

(a) investigate the business, property, affairs and financial circumstances of the company; and

(b) form an opinion as to whether it will be in the interest of the creditors for—

(i) the company to execute a restructuring agreement;

(ii) the administration to end; or

(iii) a liquidator to be appointed.

Section 17—Statement of director

(1) After the appointment of an administrator. the directors shall, within seven days, submit to the administrator, financial statements in relation to the company including—

(a) statement of financial position;

(b) statement of comprehensive income;

(c) statement of changes in equity;

(d) statement of cash flows; and

(e) description of significant accounting policies and explanatory notes to the financial statements prepared in compliance with International Financial Reporting Standards approved or adopted by the Institute of Chartered Accountants or any other standards approved or adopted by the Institute.

(2) The administrator may extend the time for compliance with subsection (1) for a further seven days.

(3) The administrator shall table the financial statements of the directors—

(a) at the first meeting of the creditors; or

(b) at the watershed meeting where the administrator has extended the time for compliance by the directors under subsection (2).

(4) A director who fails to submit financial statements—

(a) under subsection (1); or

(b) within the time determined by the administrator under subsection (2),

is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

Section 18—Right to obtain documents and information

An administrator may exercise any of the powers vested in a liquidator under section 97 with respect to access to documents and information.

Section 19—Report by administrator

(1) An administrator shall lodge a report with the Registrar and specify any matter that, in the opinion of the administrator, should be brought to the notice of the Registrar.

(2) The administrator shall report to the Registrar as soon as practicable, where the administrator believes that—

(a) a past or present officer or shareholder of the company may have committed an offence involving dishonesty or an offence in contravention of the Companies Act, 2019 (Act 992); or

(b) a person who has taken part in the formation, promotion, administration. management or liquidation of the company—

(i) may have misapplied or retained or become liable or accountable for the money or property of the company in Ghana or elsewhere; or

(ii) may have been guilty of negligence, default or breach of duty or trust in relation to the company.

(3) Where the administrator makes a report to the Registrar under subsections (1) and (2), the administrator shall give the Registrar the assistance the Registrar may reasonably require by way of—

(a) provision of information;

(b) access to documents; and

(c) facilities to inspect and copy documents.

(4) Where the Court is satisfied on the application of an interested person, that there is a need for the administrator to make a report and the administrator has not done so, the Court may direct the administrator to make the report.

(5) For the purpose of subsection (4), an "interested person" means a creditor or a past or present officer or shareholder of the company.

Section 20—Administrator to call meetings of creditor

(1) An administrator shall call—

(a) the first meeting of creditors;

(b) a watershed meeting; and

(c) other meetings of creditors that are required by the committee of creditors or the administrator.

(2) At a meeting of creditors or class of creditors held, a resolution shall be adopted if the resolution is supported by the votes of creditors or class of creditors holding at least fifty-one percent of the value of the debt owed to the creditors or class of creditors voting in person or by proxy vote or by postal vote.

(3) The administrator or a nominee of the administrator shall—

(a) chair a meeting of creditors, and

(b) have a casting vote.

(4) The administrators of related companies may call meetings of creditors of the respective companies to be held at the same time and place, but only with the consent of every creditor.

(5) In the case of a joint meeting, a creditor of a company in administration may vote only on a resolution that relates to the administration of the company of which that person is a creditor.

(6) For the purpose of subsection (4), a creditor is taken to have consented to the joint meeting where—

(a) written notice that complies with subsection (7) accompanies the notice of meeting; and

(b) the creditor has not objected to the joint meeting within the time and in the manner specified in the written notice.

(7) The notice shall—

(a) be in writing; and

(b) state

(i) the postal, electronic mail, business and residential addresses of the administrator;

(ii) the names of the related companies in respect of which the joint meeting is to be held;

(iii) that the creditor to whom the notice is sent may object to the joint meeting by sending a written objection to the administrator at the postal, electronic mail, business or residential address of the administrator within the time specified in the notice; and

(iv) that the creditor will be taken to have agreed to the joint meeting unless the creditor objects in accordance with the notice.

(8) For the purpose of subparagraph (iii) of paragraph (b) of subsection (7), the administrator shall within fourteen days, determine the time for receipt of an objection.

Section 21—First meeting of creditors

(1) The administrator shall call the first meeting of creditors to—

(a) establish a committee of creditors where necessary; or

(b) determine whether to replace the administrator.

(2) The meeting shall be held within ten days after the date on which the administration begins.

(3) The administrator shall call the first meeting of creditors by

(a) giving written notice of the meeting to the creditors of the company on record as disclosed by the records kept by the company. as is reasonably practicable; and

(b) the publication of a notice of the meeting in a daily newspaper of national circulation.

(4) The administrator shall take the steps set out in subsection (3), not less than seven days before the meeting.

(5) The administrator shall table at the first meeting of creditors referred to in paragraph (b) of subsection (2) of section 7, an interests statement that complies with subsection (6).

(6) The interests statement shall disclose whether the administrator, or a firm of which the administrator is a partner, has a relationship, whether professional, business or personal, with the company in administration or any of the officers of the company, shareholders or creditors.

(7) The administrator shall make the inquiries that are reasonably necessary to ensure that the interests statement is complete before tabling the interests statement.

Section 22—Functions of committee of creditors

(1) The functions of the committee of creditors of a company in administration include—

(a) advising the administrator about matters that relate to the administration;

(b) receiving and considering reports by the administrator; and

(c) approving the remuneration and other terms of engagement of the administrator.

(2) The administrator shall report to the committee, matters that relate to the administration as and when the committee reasonably requires.

(3) Despite subsection (2), the committee shall not give directions to the administrator.

Section 23—Membership of committee of creditors

(1) A person may be a member of the committee of creditors only if that person is—

(a) a creditor of the company;

(b) an agent of a creditor under a power of attorney; or

(c) authorised in writing by a creditor to be a member.

(2) Members of the committee of creditors shall not be less than three and more than five in number.

Section 24—Watershed meeting

(1) The administrator shall convene a watershed meeting after the convening period.

(2) The convening period is the extension of the period between the date of the appointment of the administrator and the twenty-eighth day after the date of the appointment, and includes any period under subsection (3).

(3) The Court may extend the convening period on the application of the administrator.

(4) Despite subsection (3), the Court shall not extend the convening period if the application is made after the convening period has expired, unless the Court is satisfied that a substantial injustice will result if the convening period is not extended.

(5) The administrator shall convene the watershed meeting by—

(a) giving written notice of the watershed meeting to the creditors of the company; and

(b) the publication of notice of the watershed meeting in a daily newspaper of national circulation.

(6) The administrator shall take the steps set out in subsection (5) not less than seven days before the meeting.

(7) The notice required under subsection (5) shall be accompanied with—

(a) a report by the administrator in respect of—

(i) the business, properly, affairs and financial statements of the company pursuant to section 16; and

(ii) any other matter material to the decisions of the creditors to be considered at the meeting;

(b) a statement that sets out the opinion of the administrator, with reasons for that opinion, about whether it is in the interest of the creditors of the company—

(i) to execute a restructuring agreement;

(ii) for the administration to end; or

(iii) for the company to be placed in liquidation; and

(c) a statement that sets out. the details of the proposed agreement, if a restructuring agreement is proposed.

(8) The watershed meeting shall be held within seven days after the end of the convening period or extended convening period, as the case may be.

(9) Subject to subsection (10), the directors of the company shall attend the watershed meeting, including any occasion to which the meeting is adjourned, but shall not be required to answer questions at the meeting.

(10) A director is not required to attend the watershed meeting where—

(a) the director has a valid reason for not attending; or

(b) the administrator or the creditors by resolution have the director from attending.

(11) A director who attends the watershed meeting shall take leave for the entire or pan of the meeting if required by a resolution of the creditors to do so.

(12) The administrator and the directors of the company under administration shall inform the meeting of any voting agreement of which the administrator or a director, as the case may be is aware, that requires one or more creditors to vote in a particular way on any resolution that will or may be voted on by the meeting, before the meeting votes on any resolution.

Section 25—Power of Court regarding meeting of creditors

(1) A creditor or an administrator that is dissatisfied with the outcome of proceedings regarding a meeting of creditors, may apply to the Court for an appropriate order.

(2) Where the Court is satisfied that—

(a) a resolution at a meeting of creditors was passed, rejected required to be decided by a casting vote as the case may be,

(b) the resolution referred to in paragraph (a) would not have been passed, rejected or required to be decided by a casting vote if the vote cast by a particular related creditor was disregarded, and

(c) the passing of the resolution, or the failure to pass the resolution—

(i) is contrary to the interests of the creditors or a class of creditors as a whole, or

(ii) has prejudiced or is likely to prejudice, the interests of the creditor that voted for or against the resolution to an extent that is unreasonable,

the Court may make any of the orders specified in subsection (4).

(3) For the purpose of subparagraph (ii) of paragraph (c) of subsection (2), the Court may determine whether a resolution is unreasonable having regard to—

(a) the benefits accruing to the related creditor, or to any of the related creditors, from the resolution, or from the failure to pass the resolution;

(b) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and

(c) any other related matter.

(4) The Court may

(a) order that the resolution be set aside,

(b) order that a new meeting be held to consider and vote on the resolution,

(c) order that a specified related creditor shall not vote on the resolution or on a resolution to vary or amend the resolution, or

(d) make any other order that the Court considers appropriate on the application of a creditor or the administrator.

(5) In this section—

(a) "promoter"

(i) means a person who is instrumental in the formulation of a plan or programme in accordance with which securities are offered to the public;

(ii) includes each person who is a director of the company where a company is a promoter;

(iii) does not include a director or officer of the issuer of the securities or a person acting solely in a professional capacity;

(b) "related creditor" means a creditor that is a related entity of the company in administration;

(c) "related entity" in relation to the company in administration, means—

(i) a promoter;

(ii) a relative or spouse of a promoter;

(iii) a relative of a spouse of a promoter;

(iv) a director or shareholder;

(v) a relative or spouse of a director or shareholder;

(vi) a relative of a spouse of a director or shareholder;

(vii) a related company;

(viii) a beneficiary under a trust of which the company in administration is or has at any time been a trustee;

(ix) a relative or spouse of that beneficiary;

(x) a relative of a spouse of that beneficiary;

(xi) a company, one of whose directors is also a director of the company in administration; or

(xii) a trustee of a trust under which a person is a beneficiary, if that person is a related entity of the company in administration under this subsection.

Section 26—Pooled property owners

(1) On the application of the administrator, the Court may order that, for the purpose of this section, pooled property owners are a separate class.

(2) A pooled property owner is bound by a restructuring agreement as if the pooled property owner has voted in favour of the resolution at the watershed meeting where—

(a) the Court has ordered that the pooled property owners are a separate class;

(b) the creditors, including the pooled property owners, approved the resolution at the watershed meeting; and

(c) the requisite majority of the pooled property owners were included in the creditors who voted in favour of the resolution.

(3) A separate meeting of the pooled property owners is not necessary to vote on the resolution.

(4) This section shall be in addition to, and not in derogation of sections 48 and 49.

(5) In this section,

(a) "pooled property owner" means an owner or lessor of property that is pooled in a single enterprise forming part of the business of a company in administration;

(b) "requisite majority" means at least fifty-one per cent of the pooled property owners voting in person or by proxy vote or by postal vote; and

(c) "resolution" means a resolution that a company in administration executes the restructuring agreement specified in the resolution.

Section 27—Adjournment of watershed meeting

A watershed meeting may be adjourned to a day that is not more than forty-two days after the first day on which the meeting is held, unless the Court, on the application of the administrator, orders that the meeting be adjourned for more than forty-two days.

Section 28—Decisions at watershed meeting

(1) At a watershed meeting, the creditors may resolve that the—

(a) company execute a restructuring agreement specified in the resolution; or

(b) administration should end.

(2) The resolution shall be carried if the resolution is supported by the votes of at least fifty-one percent of the creditors voting in person, by proxy or by postal vote in accordance with sections 20 and 21.

Section 29—Proposed agreement not fully approved

(1) The administrator shall inform the creditors at the watershed meeting of—

(a) the right of the creditors to inspect and comment on the draft agreement;

(b) the ultimate responsibility of the administrator for drafting the agreement; and

(c) the fact that the executed agreement may differ from the draft.

(2) Where at a watershed meeting, the creditors resolve that the company execute a restructuring agreement, but the proposed agreement is not fully approved at the meeting, the administrator shall take the steps as set out in section 46.

Protection of Property of Company

Section 30—Unenforceable charge

Subject to the provisions of sections 37, 38, 60 and 80, a person shall not enforce a charge over the property of the company during the administration of that company except by an order of the Court.

Section 31—Recovery of property

(1) During the administration of a company, the owner or lessor of property shall not, except with leave of the Court, take possession of the property or otherwise recover the property that—

(a) was used or occupied by the company, or

(b) is in the possession of the company.

(2) Subsection (1) does not prevent a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

Section 32—Proceedings in Court

During the administration of a company, a person shall not commence or continue proceedings in a Court against the company or in relation to any property of the company except with leave of the Court and on terms that the Court considers appropriate.

Section 33—Enforcement process

During the administration of a company, a person shall not commence or continue an enforcement process in relation to the property of the company except with leave of the Court and on terms that the Court considers appropriate.

Section 34—Duties of court officer in relation to property of company

(1) Where the Registrar of the Court or any other officer of the Court receives written notice that a company is in administration, the Registrar or an officer of the Court shall not—

(a) take action to sell a property of the company under an execution process;

(b) pay to a person other than the administrator—

(i) proceeds of the sale of the property of the company under an execution process where the sale has already taken place;

(ii) moneys of the company seized under an execution process; or

(iii) money in lieu of seizure or sale of property of the company under an execution process;

(c) take action in respect of the attachment of a debt due the company; or

(d) pay to a person other than the administrator, money received as a result of the attachment of a debt due the company.

(2) The officer of the Court shall deliver to the administrator, any property of the company that is in the possession of the officer of the Court due to an execution process.

(3) The officer of the Court shall pay to the administrator proceeds or moneys of a kind referred to in paragraph (b) or (d) of subsection (1) that

(a) is in the possession of the officer of the Court; or

(b) has been paid into Court and has not since been paid out.

(4) The cost of the execution or attachment is a first charge over property delivered under subsection (2) or proceeds or money paid under subsection (3).

(5) For the purpose of subsection (4), the officer of the Court may retain the cost of the execution or attachment of the property delivered under subsection (2) or proceeds or money paid under subsection (3).

(6) Despite subsection (1), the Court may permit the officer of the Court to take action, or make a payment where the Court is satisfied that it is appropriate to do so.

(7) Despite this section, a person who buys property in good faith under a sale pursuant to an execution process, conducted six months prior to the administration or restructuring of the company obtains a good title to the property as against the company and the administrator if at the date of commencement of restructuring or administration, the person—

(a) has made full payment for the property to the Court; and

(b) has met all the terms and conditions of the sale.

(8) Where the person refered to in subsection (7) fails to meet the criteria specified in paragraphs (a) and (b) of subsection (7), the sale shall be set aside.

Section 35—Liability of director or relative

(1) A guarantee in respect of a liability of the company in administration shall not be enforced against

(a) a director of the company;

(b) the spouse or relative of the director; or

(c) any related company or party during the period of administration of a company except with leave of the Court and on the terms that the Court considers appropriate.

(2) In this section, "liability" includes a debt or other obligation.

Rights of Secured Creditor

Section 36—Interpretation

(1) For the purposes of sections 37 and 38, unless the context otherwise requires,

(a) "decision period", in relation to a charge holder and to a charge over property of a company in administration, means the period that—

(i) begins when notice of the appointment of an administrator is given to the charge holder under section 72, or in any other case, on the day when the administration begins; and

(ii) ends at the close of the fourteenth day after the notice of the administration began;

(b) "enforce", in relation to a secured creditor holding a charge over property of a company in administration, includes

(i) to appoint a receiver of property of the company under a power contained in an instrument relating to the charge;

(ii) to obtain an order for the appointment of a receiver of property for the purpose of enforcing the charge;

(iii) to give notice to convert a floating charge into a fixed charge;

(iv) to enter into possession or assume control of property;

(v) to appoint a person to enter into possession or assume control as agent for the secured creditor or for the company: or

(vi) to exercise as secured creditor or as a receiver or person so appointed, a right, power or remedy that exists because of the charge, whether that right power or remedy arises under an instrument that relates to the charge, under an enactment or otherwise.

Section 37—Leave to enforce security

(1) A secured creditor affected by the appointment of an administrator may apply to the Court within the decision period, for the grant of leave to the secured creditor to enforce the security of the secured creditor.

(2) A secured creditor who makes an application to the Court shall, give notice of the application to the administrator.

(3) The administrator shall

(a) file an affidavit informing the Court whether the administrator supports or opposes the application,

(b) file a report on the assets and liabilities of the company under administration that are known to the administrator and

(c) state any respect in which, to the knowledge of the administrator, the statement of assets and liabilities of the company may be incomplete.

(4) The Court may

(a) proceed to make a determination on the application at the bearing; or

(b) where the Court considers it essential to receive further information and reports from either the secured creditor or the administrator in order to effectively determine the application, adjourn the hearing for that purpose for a period of not more than twenty-one days.

(5) The Court may, in determining the application of the secured creditor, grant leave to the secured creditor to enforce the security of the secured creditor over the property of the company where the Court is satisfied that in the circumstances of the case, serious prejudice will be caused to the secured creditor if the application is not granted and that outweighs the prejudice which shall be caused to other creditors arising from the grant of the application.

(6) The Court may, in making an order consider—

(a) the fact that the secured creditor, a receiver, or any other person involved in the enforcement of the security shall not be required to perform a specified function or exercise a specified power except as permitted by further order of the Court;

(b) the limitation of the enforcement of the security to specified property; or

(c) the directive that the enforcement by a creditor of the security of the creditor by any sale of property shall be conducted in the manner laid down by the Court or subject to any further leave or directions from the Court.

(7) A secured creditor granted leave to enforce a security shall, at intervals not exceeding three months, report to the administrator on the enforcement of the security and the proceeds recovered by the secured creditor.

(8) The Court, in the case of perishable property, on an application under this section, may make an order to grant leave to the secured creditor to immediately enforce the security so far as it is a security over perishable property and to hold any proceeds that are recovered by the secured creditor in trust for the administrator pending the determination of the application by the Court under subsection (5).

(9) Nothing in this section shall prevent a person from giving a notice under a security agreement.

Section 38—Recovery of property before administration

(1) Where a receiver or any other person before the commencement of the administration of a company,

(a) enters into possession or assumes control of property used or occupied by, or in the possession of the company; or

(b) exercises any other power in relation to the property, in order to enforce a right of the owner or lessor of the property to take possession of the property or otherwise recover the property, sections 30 and 31 shall not prevent the receiver or that other person from performing a function or exercising a power in relation to the property.

(2) Section 14 does not apply to a transaction or dealing that affects the property and is entered into in the performance of a function or the exercise of a power of the receiver or other person.

Restructuring Officer

Section 39—Restructuring officer

(1) The administrator of a company in administration shall be the restructuring officer, unless the creditors at the watershed meeting by resolution appoint an individual to be the restructuring officer.

(2) A person shall not be appointed a restructuring officer unless that person—

(a) is qualified to act as an insolvency practitioner, or

(b) has consented in writing and has not withdrawn the consent at the time when the restructuring agreement is executed.

(3) The appointment of a restructuring officer is irrevocable, except by an order of the Court.

(4) One or three persons may be appointed as restructuring officers.

(5) Where three persons are appointed as restructuring officers jointly—

(a) the function or power of the restructuring officer may be performed or exercised by anyone of the restructuring officers or all of the restructuring officers together, except where the order, instrument or resolution that appoints the persons provides otherwise; and

(b) a reference in this Act to a restructuring officer refers to one or three of the restructuring officers as the case may be.

Section 40—Vacancy in the office of restructuring officer

(1) The office of a restructuring officer shall be vacant if the restructuring officer—

(a) resigns by giving written notice to the company;

(b) becomes disqualified under section 155;

(c) is removed by the Court; or

(d) dies.

(2) The Court may—

(a) remove a restructuring officer, and appoint a person in the place of the restructuring officer; or

(b) appoint a new restructuring officer if the restructuring agreement has not yet terminated but for some reason the restructuring officer is not performing the functions of a restructuring officer.

(3) The Court may make an order under subsection (2) on the application of—

(a) the Registrar,

(b) a creditor of the company,

(c) a shareholder, or

(d) the private liquidator utile company is in private liquidation.

(4) Where there are three restructuring officers, there is a vacancy if one of the restructuring officers

(a) resigns;

(b) becomes disqualified under section 155;

(c) is removed by the Court; or

(d) dies.

(5) The creditors may appoint a new restructuring officer in the case of a vacancy.

Section 41—Remuneration of restructuring officer

(1) A restructuring officer is entitled, with the approval of the committee of creditors, to charge reasonable remuneration for the discharge of duties and exercise of powers as a restructuring officer.

(2) Where there is a disagreement as to the remuneration of a restructuring officer, the Court may, on the application of a restructuring officer, an officer, a creditor or a shareholder of the company, review or fix the remuneration of the restructuring officer at a level that is reasonable in the circumstances.

Section 42—Sale of shares by restructuring officer

(1) A restructuring officer may sell existing shares in the company—

(a) with the written consent of the shareholder concerned; or

(b) with leave of the Court on an application of the administrator on notice, where the shareholder does not consent.

(2) The shareholder, a creditor or the Registrar may oppose an application by the administrator.

Restructuring Agreement

Section 43—Application of sections 44 to 59

Sections 44 to 59 shall apply where the creditors at a watershed meeting resolve that the company executes a restructuring agreement.

Section 44—Preparation and content of restructuring agreement

(1) The restructuring officer shall prepare a document that sets out the content of the agreement.

(2) The document shall specify—

(a) who the restructuring officer is;

(b) funding of the restructuring agreement;

(c) the property of the company that will be available to pay creditors;

(d) whether the property is owned by the company at the time when the company executes the agreement;

(e) the nature and duration of any moratorium period for which the agreement provides;

(f) the extent to which the company will be released from the liabilities of the company;

(g) the conditions for the agreement to come into operation;

(h) the circumstances in which the agreement terminates;

(i) the order in which the proceeds of realisation of the property of the company will be distributed among creditors who are bound by the agreement; and

(j) the day, on or before which claims of the creditors must have arisen if the claims are to be admissible under the restructuring agreement which shall not be later than the day when the administration began.

(3) The document shall be deemed to include the provisions prescribed under sections 2 to 78, except the provisions that the document expressly excludes.

(4) A restructuring agreement shall include post-commencement financing.

Section 45—Execution of restructuring agreement

(1) A restructuring agreement takes effect when the agreement is executed by the company in administration and the restructuring officer.

(2) The restructuring agreement shall be executed within

(a) twenty-one days after a watershed meeting has approved that restructuring agreement; or

(b) a further period that the Court orders, if the restructuring officer has applied to the Court for an extension of time before the end of the initial period of twenty-one days after approval at the watershed meeting.

(3) The company shall not execute the restructuring agreement unless the directors of the company have, by resolution, authorised the execution of the agreement by the company or on behalf of the company.

(4) Subsection (3) applies despite section 12, but does not limit the functions and powers of the administrator of the company.

Section 46—Procedure if restructuring agreement not fully approved

(1) Where, at a watershed meeting, the creditors resolve that the company executes a restructuring agreement, but the proposed agreement is not fully approved at the meeting—

(a) the restructuring officer shall draft the complete agreement and circulate the agreement to the creditors within fourteen days after the meeting;

(b) the creditors may inspect the agreement for a period of three working days after the end of the period specified in paragraph (a), and

(c) the company and the restructuring officer shall execute the agreement within two working days after the end of the period specified in paragraph (b).

(2) The Court may extend the period referred to in paragraph (a) of subsection (1) by ten working days, on an application by the restructuring officer, but only if the application is made within that period.

(3) The Court may extend the period referred to in paragraph (c) of subsection (1) by additional two working days on an application by the restructuring officer, but only if the application is made within that period.

Section 47—Acts of creditor

A creditor shall not so far as that creditor will be bound by an agreement if the agreement has already been executed—

(a) do anything inconsistent with the agreement except with the leave of the Court; or

(b) take a step that is prohibited under section 51, during the period between the time of the passage of a resolution at the watershed meeting that the company executes a restructuring agreement and—

(i) the execution of the agreement by the company and the restructuring officer; or

(ii) the expiry of the period during which the agreement is executed.

Section 48—Failure of company to execute restructuring agreement

Where the creditors at a watershed meeting pass an ordinary resolution that the company executes a restructuring agreement, and the company fails to do so within the deadline for execution, the restructuring officer shall apply to the Court for leave to convert the administration of the company into official liquidation.

Section 49—Persons bound by restructuring agreement

A restructuring agreement binds—

(a) the creditors of the company, to the extent provided by section 50;

(b) the company;

(c) the officers and shareholders of the company; and

(d) the restructuring officer.

Section 50—Extent to which restructuring agreement binds creditors

(1) A restructuring agreement binds creditors including seemed creditors regarding claims that arise on or before the day specified in the agreement in accordance with paragraph (i) of subsection (2) of section 44.

(2) A secured creditor shall not realise or otherwise enforce the secured charge of the creditor except where

(a) the agreement provides for the secured creditor to realise or enforce the charge and the secured creditor at the watershed meeting voted in favour of the resolution as a result of which the company executed the agreement; or

(b) the Court makes an order to that effect under section 52.

(3) An owner or lessor of property shall not exercise rights in relation to property, except where

(a) the agreement provides for the exercise of rights in relation to an owner or lessor of property who at the watershed meeting voted in favour of the resolution as a result of which the company executed the agreement; or

(b) the Court makes an order to that effect under section 52.

Section 51—Prohibited acts

(1) A person who is bound by a restructuring agreement shall not—

(a) apply or continue with an application to the Court for the appointment of a liquidator of the company.

(b) commence or continue proceedings against the company or in relation to any property of the company except with leave of the Court; or

(c) commence or continue an enforcement process against the property of the company except with leave of the Court, while the agreement is in force.

(2) In this section, "property" includes property used or occupied by the company or in the possession of the company.

Section 52—Enforcement of charge or recovery of property

(1) The Court may, at any time after creditors have resolved at a watershed meeting that a restructuring agreement be executed, order that—

(a) a secured creditor may realise or otherwise enforce the secured charge of the creditor; or

(b) the owner or lessor of property that is used or occupied by the company or is in the possession of the company, take possession of the property or otherwise recover the property or exercise rights in relation to the property.

(2) The Court may make an order under subsection (1) subject to the terms that the Court considers appropriate.

(3) The Court may make an order under subsection (1) where the Court is satisfied that—

(a) the achievement of the purposes of the restructuring agreement would not be adversely affected if the order is made; and

(b) the secured interests of the creditor, property owner or lessor affected by the order will not be prejudiced to an extent that outweighs prejudice to other creditors if an order is not made, having regard to the terms of the restructuring agreement and the order, and any other relevant matters.

(4) An application for an order under this section may be made

(a) where the agreement has not yet been executed by the administrator; or

(b) where the agreement has been executed by the restructuring officer.

Section 53—Effect of restructuring agreement on debts of the company

(1) A restructuring agreement releases the company from a debt only where—

(a) the agreement provides for the release; and

(b) the creditor concerned is bound by the agreement.

(2) The release of the company from a debt shall not discharge or otherwise affect the liability of

(a) a guarantor of the debt; or

(b) a person who has indemnified the creditor concerned against default by the company in relation to the debt.

Section 54—Court ruling on validity of restructuring agreement

(1) The Court may rule on the validity of a restructuring agreement if there is doubt, on a specific ground, as to whether tile agreement complies with this Act.

(2) An application may be made by—

(a) the restructuring officer;

(b) a shareholder or creditor of the company; or

(c) the Registrar

to the Court for the determination of the validity of the restructuring agreement.

(3) The Court may, on an application under this section, declare

(a) a provision of the agreement void; or

(b) the agreement void.

(4) Where the Court declares that the agreement is void in contravention of this Act, the Court may validate the agreement, if the Court is satisfied that

(a) a provision of this section was substantially complied with; and

(b) injustice will result for anyone bound by the agreement if the contravention is not disregarded.

(5) Where the Court declares that a provision of the agreement is void, the Court may vary other provisions of the agreement if the restructuring officer consents.

Section 55—Variation of restructuring agreement by creditors

(1) The creditors may vary a restructuring agreement by a resolution passed at a meeting convened under section 58, except that the variation shall not be materially different from the proposed variation set out in the notice of the meeting.

(2) A creditor of a company in "administration may apply to the Court for an order to cancel the variation of the agreement by the creditors.

(3) The Court may, on hearing the application,

(a) cancel or confirm the variation subject to any condition that the Court deems appropriate; and

(b) make any other order that the Court considers appropriate.

Section 56—Termination of restructuring agreement

(1) A restructuring agreement may be terminated—

(a) by the Court under section 57; or

(b) by a resolution of the creditors under section 59; or

(2) A restructuring agreement terminates where the agreement specifies circumstances in which the agreement will terminate and those circumstances occur.

Section 57—Termination of restructuring agreement by Court

(1) The Court may terminate a restructuring agreement on the application of—

(a) the company;

(b) a creditor;

(c) the restructuring officer; or

(d) any other person with an interest in the termination of the agreement.

(2) The Court may terminate a restructuring agreement where the Court is satisfied that

(a) an information breach has occurred;

(b) there has been a material contravention of the agreement by a person bound by the agreement;

(c) effect cannot be given to the agreement without injustice or undue delay;

(d) the agreement or a provision of the agreement which if implemented under the agreement, or an act proposed to be done under the agreement shall be—

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors; or

(ii) contrary to the interests of the company as a whole; or

(e) the agreement be terminated for some other reason.

(3) The Court shall not terminate the agreement without first taking into account the rights of third parties.

(4) In this section—

"information breach" means—

(a) the giving of false or misleading information about the business, property, affairs or financial circumstances of the company

(i) to the administrator or a creditor; or

(ii) in a report or statement under subsection (7) of section 24 that accompanies a notice of meeting at which a resolution that the company executes a restructuring agreement was passed; or

(b) an omission from the report or statement referred to in subparagraph (ii) of paragraph (a) of subsection (4), where the information or the omission, as the case may be, can reasonably have been expected to be material to the creditors in deciding whether to vote in favour of the resolution that the company execute the restructuring agreement.

Section 58—Meeting of creditors to consider proposed variation or termination of restructuring agreement

(1) The restructuring officer—

(a) may convene a meeting of the creditors of the company to consider a variation to, or the termination of, the agreement; or

(b) shall convene a meeting if requested in writing by creditors whose claims against the company are not less than twenty per cent of the total value of every claim of a creditor.

(2) The restructuring officer shall convene the meeting by—

(a) giving written notice to the creditors of the company; and

(b) the publication of a notice of the meeting in a daily newspaper of national circulation.

(3) The restructuring officer shall take the steps set out in subsection (2) not less than seven days before the meeting.

(4) The notice given to the creditors shall set out any resolution to vary or terminate the agreement that is to be considered by the meeting.

(5) The restructuring officer shall preside at the meeting.

Section 59—Termination of restructuring agreement by creditors

(1) The creditors, by a resolution passed at a meeting convened under section 58 may terminate a restructuring agreement if a material breach of the agreement has occurred and the breach has not been rectified.

(2) The creditors may pass an ordinary resolution for the winding-up of the company where the notice of the meeting sets out a proposed ordinary resolution that the company be wound up by official liquidation.

Liability of Administrator

Section 60—Acts of administrator

(1) A payment made, transaction entered into, or any other related act or action taken or done, in good faith, by or with the consent of the administrator of a company in administration, shall not be set aside in the liquidation of the company.

(2) Sections 121 to 124 do not apply to a transaction by a company in administration where the transaction is—

(a) carried out by or with the authority of the administrator or restructuring officer appointed under section 39;

(b) specifically authorised by the restructuring agreement and carried out by the restructuring officer; or

(c) by order of the Court.

Section 61—Liability for debt

(1) An administrator is not liable for the debts of the company except as provided in this section.

(2) An administrator is liable for debts that the administrator incurs, in the performance or exercise, or purported performance or exercise, of the functions and powers as administrator, for—

(a) the purpose of funding the company;

(b) any services rendered; or

(c) any property hired, leased or occupied.

(3) Subsection (2) has effect despite any agreement to the contrary, but without limiting the rights of the administrator against the company or any other person.

(4) An administrator is liable, to the extent specified in subsection (5), for the rent and other payments that become due by the company under an agreement—

(a) made before the administration began; and

(b) that relates to the use, possession or occupation of property by the company.

(5) An administrator is liable for rent and other payments that accrue in the period

(a) commencing fourteen days after the administration begins; and

(b) during which

(i) the company continues to use or occupy, or be in possession of the property; and

(ii) the administration continues; and

(c) ending on the earliest of any of the following:

(i) the end of the administration;

(ii) the giving of a notice under section 62;

(iii) the appointment of a receiver of the property where an order is made under section 52 to permit a secured creditor or owner of property to enforce a charge or exercise rights in relation to property;

(iv) the appointment of an agent by a secured creditor of the property, under the provisions of a charge over the property, to enter into possession or to assume control of the property where an order is made to that effect under section 52; or

(v) where a secured creditor takes possession or assumes control of the property under the provisions of a charge over the property where an order is made to that effect under section 52.

(6) An administrator shall not be deemed to—

(a) have adopted the agreement; or

(b) be liable under the agreement subject to subsection (5).

(7) This section shall not affect the liability of the company for rent or any other payment due under the agreement.

Section 62—Non-use notice

(1) An administrator is not liable under section 61 for any period during which a non-use notice is in force which—

(a) is given by the administrator to the owner or the lessor of the property within fourteen days after the administration commences;

(b) specifies the property to which the notice relates; and

(e) states that the company does not propose to use the property or otherwise exercise any rights in relation to the property.

(2) A notice under subsection (1) ceases to have effect where—

(a) the administrator, in writing to the owner or lessor, revokes the notice; or

(b) the company exercises, or purports to exercise, a right in relation to the property.

(3) For the purpose of paragraph (b) of subsection (2), the company does not exercise, or purport to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company—

(a) also uses the property; or

(b) asserts a right, as against the owner or the lessor, to continue to occupy or be in possession.

(4) A notice under this section shall not affect the liability of the company for rent and other payments.

(5) The Court may exempt an administrator from liability for rent and other payments under this section, but the order of the Court shall not affect the liability of the company.

Section 63—Indemnity of administrator

(1) An administrator shall be indemnified out of the property of the company for—

(a) a liability incurred in the performance of the duties but not a liability incurred in bad faith or negligently; and

(b) the remuneration to which the administrator is entitled.

(2) Subject to section 64, the right of indemnity of an administrator under this section has priority over the debts of the company.

(3) An administrator has a lien on the property of the company to secure a right of indemnity under this section.

(4) A lien has priority over a charge to the same extent as the right of indemnity has priority over a debt secured by the relevant charge.

Power of the Court

Section 64—General powers of Court

(1) The Court may make any order that the Court considers appropriate in respect of the administration of a company.

(2) The Court may terminate an administration where the Court is satisfied that—

(a) the company is solvent;

(b) the provisions on the administration of companies are not being complied with; or

(e) for some other justifiable reason the administration should end

(3) The Court may make an order under this section on the application of

(a) the company;

(b) a creditor of the company;

(c) the administrator;

(d) the restructuring officer;

(e) the Registrar; or

(f) any other person with an interest in the administration of the company.

Section 65—Order to protect creditor during administration

The Court may, on the application of the Registrar or a director of a company, make an order which the Court considers necessary to protect the interests of the creditors of the company in administration.

Section 66—Validity of appointment of administrator or restructuring officer

(1) Where there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or restructuring officer, any of the following persons may apply to the Court for a ruling on the validity of the appointment:

(a) the person appointed;

(b) the company in question; or

(e) a creditor of the company.

(2) The Court, in making the ruling that the appointment is invalid, is not limited to the grounds specified in the application.

Section 67—Application by administrator or restructuring officer to Court for directions

(1) An administrator or a restructuring officer may apply to the Court for directions in respect of the performance or exercise of any of the functions and powers of the administrator or restructuring officer.

(2) An administrator or a restructuring officer may apply to the Court for directions in relation to the operations of, or for giving effect to the restructuring agreement.

Section 68—Supervision of administrator or restructuring officer

(1) The Court may make an order that the Court considers appropriate where the Court is satisfied that

(a) the management of the business, property or affairs of the company by an administrator or a restructuring officer is prejudicial to the interests of a creditor or shareholder of the company; or

(b) the conduct of an administrator or a restructuring officer has been, is or will be prejudicial to the interests of a creditor or shareholder.

(2) An application for an order under this section may be made by—

(a) a creditor or shareholder of the company;

(b) the Registrar; or

(e) any other person with interest in the administration of the company.

Section 69—Order to remedy default

(1) The Court may order an administrator or a restructuring officer to remedy the default of that administrator or restructuring officer.

(2) An order may be made where—

(a) the administrator or restructuring officer has failed, as required by this Act or any other enactment. to make or file any return, account, or other document or to give a notice, and has not remedied the default within fourteen days after service on the administrator, a notice by a shareholder or creditor of the company in administration requiring that the default be remedied; or

(b) the administrator or restructuring officer has failed, after being required at any time by the liquidator of the company to do so

(i) to render proper accounts of, and to provide appropriate vouchers for the receipts and payments as administrator or restructuring officer; or

(ii) to pay to the liquidator an amount properly payable to the liquidator.

(3) An application for an order under this section may be made by—

(a) a shareholder or creditor of the company, in the case of a default referred to in paragragh[sic] (a) of subsection (2);

(b) the liquidator in the case of a default referred to in paragraph (b) of subsection (2); or

(c) the Registrar; or

(d) any other person with interest in the administration or restructuring of the company.

Section 70—Power of Court to make an order in relation to vacancy in the office of administrator or restructuring officer

(1) The Court may make any order the Court considers appropriate where the Court is satisfied that

(a) the office of the administrator is vacant or no administrator is acting in the case of a company in administration; or

(b) the office of the restructuring officer is vacant or no restructuring officer is acting in the case of a restructuring agreement.

(2) An application for an order may be made by—

(a) a creditor or shareholder of the company; or

(b) the Registrar.

Section 71—Prohibition order against an administrator or restructuring officer

(1) The Court shall make a prohibition order in respect of a person where the Court is satisfied that, that person is unfit to act as an administrator or a restructuring officer.

(2) The Court may, make a prohibition order for a period not exceeding five years.

(3) A person against whom a prohibition order is made shall not act as an insolvency practitioner.

(4) The Court may make an order under this section in respect of a past or current administrator or restructuring officer of a company in administration on the application of—

(a) the company or a shareholder of the company;

(b) a creditor of the company;

(c) the administrator or restructuring officer of the company;

(d) the Registrar; or

(e) any other person interested in the administration of the company.

(5) The applicant shall deliver to the Registrar a copy of an order made under subsection (1) within ten working days after the order is made.

(6) The Registrar shall keep on file indexed by reference to the name of the administrator or restructuring officer concerned a copy of the order delivered.

(7) In this section, "failure to comply" means a failure of an administrator or restructuring officer to Comply with a relevant duty that arises—

(a) under this or any other enactment; or

(b) under any order or direction of the Court.

Notices

Section 72—Notice of appointment

(1) An administrator or a restructuring officer appointed by a company, the liquidator, a secured creditor or the Court shall—

(a) lodge a notice of the appointment with the Registrar for publication in the Companies Bulletin before the end of the next working day after the appointment;

(b) publish a notice of the appointment in the Companies Bulletin within three working days after the appointment; and

(e) give written notice of the appointment within seventy-two hours after the appointment to—

(i) each person who holds a charge over the whole, or substantially the whole, of the property of the company; or

(ii) each person who holds two or more charges over the property of the company where the property of the company subject to those charges together, is the whole, or substantially the whole, of the property of the company; and

(d) publish a notice of the appointment in a daily newspaper of national circulation.

(2) The Registrar shall cause to be published in the Companies Bulletin the appointment of the administrator.

(3) A secured creditor who appoints an administrator under section 3 shall give written notice of the appointment to the company before the end of the next working day.

Section 73—Notice of execution of restructuring agreement

The restructuring officer shall within fourteen days after a restructuring agreement is executed

(a) send to each creditor a written notice of the execution of the agreement;

(b) file a copy of the agreement with the Registrar; and

(c) publish a notice of the execution of the agreement in

(i) a daily newspaper of national circulation; and

(ii) the Companies Bulletin.

Section 74—Notice of failure to execute restructuring agreement

The restructuring officer shall, where a company does not meet the deadline for the execution of a restructuring agreement,

(a) publish a notice of the failure in a daily newspaper of national circulation, and

(b) file a copy of the notice, within seventy-two hours with the Registrar for publication in the Companies Bulletin.

Section 75—Notice of termination by creditors of restructuring agreement

The restructuring officer shall, where the creditors terminate a restructuring agreement

(a) send a notice of the termination to each of the creditors;

(b) publish the notice twice in a daily newspaper of national circulation; and

(e) file a copy of the notice with the Registrar within fourteen days.

Section 76—Notice of administration

(1) A company in administration shall set out in each document issued or signed by or on behalf of the company that evidences or creates a legal obligation of the company, after the name of the company where the name first appears the words, "in administration" for as long as the company is in administration.

(2) The Court may exempt the company from the requirement of subsection (1) on an application by the company.

Section 77—Notice of change of name

(1) A company in administration that changes the name twelve months before the appointment of the administrator shall include the former name in any document of the company where the name appears.

(2) Where a company to which subsection (1) applies is in the course of the administration placed in liquidation, the liquidator shall include the former name of the company in any document of the company where the name appears.

Section 78—Effect of contravention of sections 72 to 77

A contravention of sections 72 to 77 shall not affect the validity of anything done under sections 72 to 77 unless the Court orders otherwise.

Commencement of Official Liquidation

Section 79—Purpose of sections 80 to 149

(1) The purpose of sections 80 to 149 is to provide for the official winding up of a body corporate in a manner that results in the maximisation of the realisation of the estate of the insolvent company and the distribution of the estate having regard to the equitable treatment of stakeholders in the company.

(2) Where the Registrar is appointed as official liquidator, sections 80 to 107 shall apply.

Section 80—Appointment of liquidator for company in administration

(1) A liquidator may be appointed for a company in administration—

(a) by the Court, on an application under section 86;

(b) by resolution of the creditors at a watershed meeting; or

(c) at a meeting convened under section 58 to consider the termination of a restructuring agreement.

(2) The Court may adjourn the hearing of the application under section 86 for the appointment of a liquidator for a company in administration where the Court is satisfied that, it is in the interest of the creditors of the company for the company to continue in administration rather than be placed in liquidation.

(3) The Court shall not appoint a liquidator of a company in administration where the Corut is satisfied that it is in the interest of the creditors of the company for the company to continue in administration rather than have a liquidator appointed.

(4) The appointment by the Court of a liquidator for a company that is in administration ends the administration.

(5) Where a liquidator is appointed to a company that is in administration under a restructuring agreement, the person in control of the company immediately before the appointment of the liquidator shall lodge with the Registrar

(a) a copy of the report of the administrator that accompanied the notice to creditors of the watershed meeting; and

(b) a further report that updates the report of the administrator with any matters of which the administrator is aware that

(i) are not referred to in the report of the administrator, or that have changed since that report; and

(ii) affect the financial position of the company.

(6) Where there is no administrator or restructuring officer to act when the company is placed in liquidation, the directors of the company at the date of liquidation shall take the steps described in this section and act in the stead of the administrator or restructuring-officer.

Section 81—Modes of winding-up

(1) The official winding-up of a company may be commenced by a—

(a) special resolution of the company;

(b) petition addressed to the Registrar;

(e) petition to the Court;

(d) conversion from a private liquidation; or

(e) conversion from administration or restructuring of the company.

(2) Unless a contrary intention appears, sections 82 to 147 apply with respect to the winding-up of a company in any of the modes of winding up.

Section 82—Procedure on resolution

(1) A special resolution of a company for the official winding-up of the company shall state that, the company shall be wound up by way of an official winding-up.

(2) A copy of the special resolution and the notice for the meeting shall be served on the Registrar.

(3) The Registrar or a representative of the Registrar shall be afforded the opportunity to attend the meeting at which the special resolution is passed.

(4) When a company has passed a special resolution for the official winding-up of the company, a copy of the resolution shall be sent immediately by the directors of the company to the Registrar.

(5) The Registrar shall publish the resolution in the Companies Bulletin after receipt of the resolution.

(6) When the special resolution is passed, the official liquidator shall take immediate control of the assets of the company.

(7) After the passage of the resolution, a director, officer, liquidator or the official liquidator shall not dispose of the assets of the company without the approval of the Court unless the disposal is in the normal course of business.

(8) Where a person, other than a body corporate, contravenes subsection (7), that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both.

Section 83—Procedure on petition to the Registrar

(1) Subject to subsections (2) and (3), a person who is—

(a) a creditor of a company, or

(b) a member or contributory of a company

may present a petition to the Registrar for the official winding-up of the company.

(2) A member of a company with shares is not entitled to present a winding-up petition unless the shares or some of the shares of that member

(a) were originally allotted to that member;

(b) have been held by that member, and registered in the name of that member for at least six months during the eighteen months preceding the date of the presentation of the petition; or

(e) have devolved on that member by operation of law.

(3) The Registrar shall not consider a winding-up petition presented by a contingent or prospective creditor

(a) unless a security for costs that the Registrar considers reasonable has been given, and

(b) until a prima facie case for winding-up has been established to the satisfaction of the Registrar.

(4) The Registrar may order the official winding-up of the company on the petition if the Registrar is satisfied that the company is unable to pay the debts of the company.

(5) For the purpose of sections 80 to 148, a company is unable to pay the debts of the company if—

(a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum of money of not more than ten thousand currency points then due, has served on the company a written demand requiring the company to pay the sum of money that is due and the company has for thirty days after the demand, neglected to pay the sum of money or to secure or compound for the sum of money to the reasonable satisfaction of the creditor;

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

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

(6) The Registrar shall in determining whether a company is unable to pay the debts of the company, take into account the contingent and prospective liabilities of the company.

(7) The petitioner shall serve a copy of the petition on the company on or before the day on which the petition is presented to the Registrar.

(8) Where two or more petitions are presented in respect of the same company a winding-up order made in respect of any of the petitions shall be deemed to have been made in respect of each petition presented.

(9) A further petition shall not be presented in respect of a company regarding a winding-up order that has been made before the termination of the official winding-up proceedings.

(10) The Registrar shall—

(a) place on record a copy of the winding-up order for the company concerned. and

(b) publish the order in the Companies Bulletin.

Section 84—Procedure on petition to the Court

(1) The following persons may present a petition to the Court for the official winding-up of a company, in the circumstances specified in subsection (2):

(a) the Registrar,

(b) a creditor of the company,

(c) a member of the company with shares, or

(d) a contributory of the company. [As substituted by Corporate Insolvency Restructuring (Amendment) Act, 2020 (Act 1031), s.1 (a)]

(1A) The Attorney-General may present a petition to the Court for the official winding-up of the company only in the circumstances specified in paragraphs (c), (d) and (e) of subsection (2). [As inserted by Corporate Insolvency Restructuring (Amendment) Act, 2020 (Act 1031), s.1 (b)]

(2) The Court may order the official winding-up of a company on a petition presented where—

(a) the company

(i) does not commence the business which the company is authorised by the constitution of the company to carry on, or

(ii) suspends business for a year within a year after the incorporation of the company;

(b) the company does not have members;

(c) the business or objects of the company are unlawful;

(d) the company is operated for an illegal purpose;

(e) the business being carried out by the company is not authorised by the constitution of the company;

(f) the company is unable to pay the debts of the company; or

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

(3) In the determination of whether the company is unable to pay the debts of the company, subsection (5) of section 83 applies.

(4) On the hearing of the winding-up petition, the Court may—

(a) dismiss the petition,

(b) adjourn the hearing conditionally or unconditionally, or

(c) make an interim order, or any other appropriate order subject to subsection (5).

(5) The Court shall not refuse to make a winding-up order only on the grounds that

(a) the assets of the company have been mortgaged to an amount equal to, or in excess of, those assets; or

(b) the company does not have assets.

(6) Where the petition is presented by members or contributories of the company on the grounds that it is just and equitable that the company should be wound up, the Court shall make a winding-up order if the Court is of the opinion that—

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

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

(7) Despite subsection (6), where the Court finds that, an alternative remedy is available to the petitioners and that the petitioners acted unreasonably in seeking to have the company wound up instead of pursuing the alternative remedy, the Court shall not make a winding-up order.

(8) After the winding-up order is made, the Registrar of the Court shall forward a copy of the order to the Registrar.

(9) After receipt of the order, the Registrar shall make a minute of the winding-up order in the books of the Registrar relating to the company and publish the order in the Companies Bulletin.

(10) Subject to this section, the Court may appoint the Registrar as the liquidator to exercise all or any of the powers of a liquidator at any time between the presentation of a petition and the making of a winding-up order.

Section 85—Procedure on conversion from administration to official winding-up

(1) The Registrar may make a winding-up order to convert a private liquidation into an official winding-up if the liquidator gives notice under a private liquidation in accordance with the Companies Act, 2019 (Act 992) alleging that the company may not be able to pay the debts of the company in full within the period stated in the declaration of insolvency.

(2) The notice shall be accompanied with a statement in the prescribed form of the assets and liabilities of the company.

(3) For the purpose of this section, proceedings taken on a private liquidation are validly taken unless the Court otherwise directs.

Section 86—Procedure on conversion from administration to official winding-up

(1) The Registrar may by an application to the Court, make a winding-up order to convert the administration of a company into an official winding-up when the administrator gives notice that the administration has been converted into official liquidation.

(2) A statement in the prescribed form of the assets and liabilities of the company shall accompany the notice.

(3) For the purpose of this section, proceedings taken on an administration are validly taken unless the Court otherwise directs.

Section 87—Stay of proceedings

(1) On the commencement of winding-up proceedings against a company, civil proceedings against the company shall be stayed and any transfer of shares of the company within that period is void.

(2) The Court may, on an application made by a party to the petition or the Registrar stay the proceedings by or against the company, or regarding the property of the company during the interval between the presentation of a petition for an official winding-up and the commencement of the winding-up.

(3) In accordance with subsection (2), a disposition of the property of the company, including things in action and a transfer of shares is void, unless the Court otherwise directs.

Section 88—Costs of application for liquidation

(1) The liquidator shall pay the reasonable costs of the person who applied to the Court for an order that the company be wound up. Including the costs incurred by legal counsel and client in procuring the order.

(2) The costs of the application shall be determined in accordance with the rules of Court.

(3) An applicant shall bear the cost of an unsuccessful application for the winding-up of a company.

Effect of Commencement of Official liquidation

Section 89—Period of commencement

(1) An official winding-up under this Act commences—

(a) on the passage of a resolution for the winding-up of the company, or

(b) on the making of a winding-up order.

(2) The words "commencement of a winding-up" and the cognate expressions shall be construed accordingly.

Section 90—Cessation of functions of directors

On the commencement of a winding-up, the functions of the directors of the company shall vest in the liquidator who assumes a fiduciary position to the company.

Section 91—Cessation of business of company

(1) On the commencement of a winding-up, the company shall cease to carry on the business of the company except where the company is required to do so for the beneficial winding-up of the company.

(2) The corporate status and the corporate powers of the company shall continue until the company is dissolved despite any provision to the contrary in the constitution of the company.

Section 92—Custody of property of company

(1) The property of a company shall be vested in the liquidator during winding-up proceedings except as otherwise directed by the liquidator.

(2) Subject to subsection (1), the liquidator shall take into custody or keep under control, the property and things in action to which the company is or appears to be entitled.

(3) The property in the possession of the company at any time within six months before the commencement of a winding-up shall be presumed to be vested in the company unless the contrary is shown.

(4) The liquidator may require a member or contributory and a trustee, receiver, banker, an agent or officer of the company after the commencement of a winding-up, to pay, deliver, convey, surrender or transfer to the liquidator immediately, or within a reasonable time that the liquidator may direct, the money, property or books, records, returns, and other relevant documents in the possession of the person to which the company is entitled.

Section 93—Prohibition of civil proceedings

A person shall not, on the commencement of a winding-up proceed with or commence an action or civil proceedings against the company, other than proceedings by a secured creditor for realisation of the security of that secured creditor, except

(a) by leave of the Court; and

(b) subject to the terms that the Court may impose.

Section 94—Transfer of shares on commencement of winding-up

A transfer of shares made after the commencement of any winding-up is void unless the transfer is made to the liquidator or with the approval of the Court.

The Liquidator

Section 95—Nomination and appointment of liquidator by creditors of a company

(1) The creditors of a company may nominate and appoint a person to be a liquidator for the purpose of winding-up the affairs and distributing the assets of that company.

(2) A person shall not be appointed a liquidator if that person is not qualified under section 155 to be an insolvency practitioner.

(3) A person shall not be appointed a liquidator unless—

(a) that person has consented in writing and has not withdrawn the consent at the time of appointment, and

(b) the consent of the person has been filed with the Registrar.

(4) Where the creditors are unable to appoint a liquidator, the creditors shall, within seven days, notify the Registrar who is the official liquidator to be the liquidator.

(5) In sections 96 to 107, references to "the liquidator" include references to "the official liquidator" where the official liquidator is selected by the Government.

Section 96—Status of the liquidator in an official winding up

(1) In an official winding-up. the liquidator stands in a fiduciary relationship to the company as if the liquidator were a director of the company.

(2) The Companies Act, 2019 (Act 992) applies to the liquidator in the manner and to the extent that the Act applies to a director.

(3) A liability shall not attach to the—

(a) liquidator in respect of a breach of duty imposed on the liquidator by or under this Act; or

(b) Republic in respect of a breach of duty referred to in paragraph (a) except for the reimbursement of the moneys lost to the company through the default of the liquidator.

(4) This section does not affect the institution against a public officer of criminal proceedings or of disciplinary proceedings under the Civil Service Act, (P.N.D.C. L. 327).

Section 97—Powers of the liquidator in an official winding up

In an official winding-up the liquidator may—

(a) bring or defend an action or any other legal proceeding in the name and on behalf of the company;

(b) carry on the business of the company so far as it is necessary for the beneficial winding-up of the company;

(c) appoint a legal practitioner or any other professional to assist the liquidator in the performance of the functions of the liquidator;

(d) pay any class of creditors in full;

(e) make a compromise or an agreement, with creditors or persons claiming to be creditors to have present or future claims, certain or contingent. ascertained or sounding only in damages against the company or whereby the company may be rendered liable subject to the Companies Act, 2019 (Act 992);

(f) make a compromise on

(i) calls and liabilities to calls,

(ii) debts and liabilities capable of resulting in debts. or

(iii) present or future claims. certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory, or any other debtor or person apprehending liability to the company, and the questions relating to or affecting the assets or the winding-up of the company on the terms that may be agreed;

(g) take security for the discharge of the calls, debts, liabilities or claim and give complete discharge in respect of any of them;

(h) sell the property and things in action of the company by public auction or private contract, with power to transfer the whole of that property or those things to a person or company or to sell the property or those things in parcels;

(i) do the acts and execute, in the name and on behalf of the company, the agreements, receipts and any other documents and for that purpose use, when necessary, the seal of the company;

(j) prove and rank the claims in the bankruptcy and insolvency of a contributory for a balance against the estate of the contributory, and may receive dividends in the bankruptcy or insolvency regarding the balance, as a separate debt due from the bankrupt or insolvent and proportionately with the other separate creditors;

(k) draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect regarding the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of the business of the company;

(l) raise the requisite money on the security of the assets of the company;

(m) take out letters of administration of a deceased contributory and perform in the name of the liquidator or do any other act necessary to obtain payment for money due from the contributory or the estate of the contributory which cannot conveniently be done in the name of the company, and in those cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed to be due to the liquidator; and

(n) do any other act necessary for winding-up the affairs of the company and the distribution of the assets of the company.

Section 98—Delegation of functions

(1) The liquidator may delegate a function required or authorised to be done by or in relation to the liquidator to a public officer authorised in that behalf by the liquidator or under any other enactment but the liquidator shall not be relieved from the ultimate responsibility for the performance of the delegated function.

(2) A public officer acting on behalf of the liquidator is presumed to be authorised unless the contrary is shown.

(3) A reference to the liquidator in an enactment includes a public officer authorised or presumed to be authorised under subsection (2).

(4) Where the liquidator considers it necessary, for the performance of the functions of the liquidator, the liquidator may make the appropriate payment for the services of a professional who is not a public officer.

Section 99—Powers of the Court

(1) A person aggrieved by an act done by the liquidator in the performance of functions of the liquidator under this Act, may apply to the Court which shall make an appropriate order.

(2) Where a person refuses or fails to comply with a requirement by the liquidator under this Act, the liquidator may apply to the Court, which may order the requirements to be carried out.

(3) Where the liquidator is in doubt as to a matter in connection with the functions of the liquidator Under this Act, the liquidator may apply to the Court for directions.

Section 100—Liquidation Fund

(1) There is established by this Act the Liquidation Fund.

(2) The moneys received by the liquidator referred to under sections 101 to 111 and sections 120 to 127 shall be paid into the Liquidation Fund and the moneys disbursed by the liquidator referred to under those sections shall be paid out of the Liquidation Fund.

(3) There shall be a Fees Account within the Liquidation Fund.

(4) The moneys received by the liquidator by way of fees and any other charges shall be credited to the Fees Account.

(5) The payments required or authorised to be disbursed from the Liquidation Fund are charged on that Fund.

General Duties of Liquidator in Administration of Property of Company

Section 101—Collection of debts

On the commencement of the winding-up, the liquidator shall secure—

(a) the payment of a debt owed to the company or any other discharge of the debt; and

(b) any obligation the right to which has passed to the liquidator under section 109.

Section 102—Vesting property in liquidator

(1) On the commencement of the winding-up, the liquidator shall by notice in the Companies Bulletin direct that the whole property or a part of the property of whatever description that belongs to the company or that is held by trustees on behalf of the company, shall vest in the liquidator in the official name of the liquidator and the property to which the notice relates shall vest accordingly.

(2) The liquidator may bring or defend the acts or any other legal proceedings which relate to the property of the company or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering the property of the company.

Section 103—Realising assets

(1) On the commencement of a winding-up, the liquidator shall realise as soon as practicable, the assets that are not held as cash by the means and for the return that will produce for distribution to the creditors of the company, sums of money representing the full value of the assets.

(2) Subsection (1) does not require the realisation of assets which cannot be readily or advantageously disposed of.

Section 104—Verifying debts ranking for dividends

(1) At the conclusion of the first meeting of creditors after the appointment of the liquidator or, if a first meeting is not held, as soon as practicable after the admission of the proof of debt under section 111, the liquidator shall take practical steps to verify the accuracy of each admitted proof of debt.

(2) The liquidator may give notice to a creditor holding a security that, if the security is not realised within the period specified in the notice, which shall not be more than six months, the security shall be treated as surrendered.

(3) Subject to sections 105 to 115, a debt shall rank for dividend at any time if the debt is at that time included in an admitted proof, and the value of the debt shall be taken to be the value shown at that time in the admitted proof.

Section 105—Set-off

(1) A set-off shall be allowed if—

(a) the set-off involves pre-application debt obligations by the creditor and debtor company;

(b) the debtor company was not rendered insolvent immediately after the set-off; and

(c) the transaction was in the ordinary course of business, subject to subsection (2).

(2) A transaction entered into for the purpose of set-off where there is fraud and collusion shall not be allowed.

(3) A transaction shall be deemed to be fraudulent if the transaction is—

(a) entered into after an application for winding-up; or

(b) made in circumstances where the creditor knew or ought to have known that the company was insolvent.

Section 106—Amendment of admitted proof of debt

(1) Where the value of a debt or security included in an admitted proof of debt has changed otherwise than in respect of interest accruing after the commencement of the winding-up order, the proof of debt is subject to amendment in order to alter the value shown in the admitted proof of debt to give effect to the change.

(2) Where a debt or security is incorrectly included in an admitted proof or the value of a debt or security at the date of the commencement of the winding-up order is incorrectly stated, the proof is subject to amendment in order to rectify the error.

(3) Where a creditor desires to withdraw the claims of the creditor to the whole or a part of the debt included in an admitted proof, the proof is subject to amendment in order to cancel the debt or reduce the value of the debt accordingly.

(4) Where an admitted proof is subject to amendment under this section,

(a) the liquidator may, except in the case of an amendment under subsection (3), give notice to the creditor to specify the proposed amendment and invite the creditor to consent to the proposed amendment within the period specified in the notice, or

(b) the creditor may, where the liquidator has not given the notice, give notice to the liquidator to specify the proposed amendment and, except in the case of amendment under subsection (3), invite the liquidator to consent to the proposed amendment within the period specified in the notice.

(5) Where notice of a proposed amendment is given under subsection (4), the liquidator shall amend the proof of debt accordingly if,

(a) the party to whom the notice is given consents to the amendment;

(b) consent is not given but, on an application by the creditor or liquidator, the Court orders the amendment to be made; or

(e) the amendment is proposed by the creditor under subsection (3).

Section 107—Classification and priority of debt

(1) On the commencement of liquidation, the liquidator shall, in relation to each debt which ranks for dividend, ascertain into which class the debt or a part of the debt falls.

(2) A debt shall be classified according to the ranking specified in subsection (3).

(3) A debt classified as a—

(a) Class A debt is a debt in respect of Post-Commencement Financing which takes priority over all other creditor claims including secured and preferential class and shall be paid in full;

(b) Class B is a preferential debt which

(i) ranks equally between other preferential debts against the estate of the company;

(ii) shall be paid in full unless the remainder of the estate is insufficient to meet the preferential debt in which case the preferential debt shall be paid in equal proportions; and

(iii) is debt or part of a debt which answers to either of the following descriptions:

(aa) remuneration owed to an employee of the company regarding employment during the whole or a part of the four months preceding the date of commencement of administration or winding-up; or

(bb) rates, taxes or similar payments owed to the Republic or a local authority which have become due and payable within the year preceding the date of the commencement of administration or winding-up;

(c) Class C debt is a secured debt and shall be secured by a fixed charge against an asset of the company;

(d) Class D debt is a debt or a part of a debt which does not fall within a Class E debt and is, or was, within the year preceding the commencement of winding-up, owed to a director or former director of the company;

(e) Class E debt is a debt or a part of a debt which satisfies any of the following conditions:

(i) excess benefit restored to the liquidator under section 123; or

(ii) excess interest that is a portion of a debt which, whether it is stated to do so or not, represents interests at a rate in excess of five percent above the Bank of Ghana policy rate;

(f) Class F debt is an unsecured debt that is not secured by a charge of any kind over an asset of the company and does not fall into any of the other classes in this section;

(g) Class G debt is debt in respect of preference shareholders; and

(h) Class H debt is debt in respect of ordinary shareholders.

Investigation into the Affairs of the Company

Section 108—Statement of affairs

(1) A person shall, on the written request of a liquidator, prepare and submit to the liquidator a statement regarding the affairs of the c company in the form approved by the liquidator within fourteen days or any other period that the liquidator may in writing permit.

(2) The statement shall be supported with an affidavit to verify the statement and shall indicate

(a) particulars of the total assets of the company,

(b) the debts and liabilities of the company including particulars of the transactions of the company during the period that the liquidator the period that the liquidator may specify in writing,

(c) the names, residential and postal addresses and the occupations of the creditors of the company held by the creditors of the company,

(d) the securities held by the creditors of the company and the dates when the securities were respectively given to the creditors of the company,

(e) a statement of the reasons for the insolvency of the company, and

(f) any other information that the liquidator may require.

(3) A person who—

(a) was a director or a secretary of the company at the commencement of the winding-up,

(b) is or has been an officer of the company who has taken part in the formation of the company at any time within one year before the commencement of the winding-up

(c) is or has been in the employment of the company within one ear before the commencement of the winding-up and in the opinion of the liquidator is capable of giving the information required, or

(d) is or has been, within one year before the commencement of the winding-up, an officer of the company to which the statements relate,

shall submit and verify the statement as required by the liquidator.

(4) The liquidator shall pay out of the assets of the company, the cost and expenses incurred by a person who makes or concurs to make the statement and affidavit required by this section that the liquidator considers reasonable subject to an appeal to the Court.

(5) A person who, without reasonable excuse, defaults in compliance with the requirements of this section commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each day during which the default continues.

(6) On payment of the prescribed fees, a person who claims in writing to be a creditor, member or a contributory of the company or an agent of that person is personally entitled to—

(a) inspect the statement submitted at a reasonable time; and

(b) a copy of or an extract from the statement.

(7) A person who makes a false statement in writing to indicate that that person is a creditor, member or a contributory of the company, commits an offence and is liable on summary conviction for contempt of court on an application made by the liquidator.

Section 109—Settlement of list of contributories

(1) As soon as practicable after the appointment of the liquidator, the liquidator shall—

(a) settle a list of contributories with power to rectify the register of members in the cases where rectification is required in pursuance of this section, and

(b) cause the assets of the company to be collected and applied in the discharge of the liabilities of the company.

(2) Subject to subsection (1), where it appears to the liquidator that it will not be necessary to make calls on, or adjust the rights of contributories, the liquidator may dispense with the settlement of a list of contributories.

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

(4) The liability of a contributory creates a debt in the nature of a speciality accrued, due from that contributory at the time when the liability of that contributory commenced but payable at the times calls are made for enforcing the liability.

(5) Where a contributory dies before or after the settlement of the list of contributories, the personal representative is liable in due course of administration to contribute to the assets of the company in discharge of the liability of that contributory and shall be deemed to be a contributory accordingly.

(6) Where a personal representative is placed on the list of contributories and defaults in the payment of moneys ordered to be paid by the personal representative, proceedings may be taken for the administration of the estate of the deceased contributory and for compelling payment from that estate of the moneys due.

(7) Where a contributory becomes bankrupt, before or after the settlement of the list of contributories

(a) the trustee in bankruptcy of that contributory

(i) shall represent the contributory for the purposes of the official winding-up,

(ii) shall be deemed accordingly to be a contributory,

(iii) may be called on to admit to prove against the estate of the bankrupt, and

(iv) may be called on to allow to be paid out of the assets in due course of law, the moneys due from the bankrupt in respect of the liability of the bankrupt to contribute to the assets of the company; and

(b) proof may be made against the estate of the bankrupt of the estimated value of the liability of the bankrupt to future calls, as well as calls already made.

(8) Subject to this section, when the creditors of the company are paid in full, moneys due on an account to a contributory from the company may be made to the contributory by way of set-off against a subsequent call.

(9) Where a company is in the course of being wound up, the books and papers of the company and of the liquidator are prima facie evidence, as between the contributories of the company, of the veracity of the matters recorded in the books and papers.

Section 110—Rectification of register of members

Subject to sections 80 to 148, a person aggrieved, a member of the company, the company or the liquidator, may apply to the Court for the rectification of the register of members.

Section 111—Proof of debt

(1) During the existence of a winding-up order, a creditor of a company may in accordance with this section lodge with the liquidator a statement, referred to as a proof of debt.

(2) The proof of debt shall be in two parts.

(3) The first part of the proof of debt shall contain brief particulars of—

(a) the values and due dates of provable debts alleged by the creditor to be outstanding in favour of the creditor against the company and the nature and value of the securities held by the creditor in respect of the debts,

(b) the values and due dates of the obligations outstanding in favour of the company against the creditor on the date on which the winding-up order was made against the company,

(c) the nature and value of securities of any description held by the company regarding the outstanding obligations, and

(d) the total values of the debts, obligations and securities specified in this subsection.

(4) The second part of the proof of debt shall contain details of the transactions from which the debts and obligations arise.

(5) The liquidator shall give a copy of the first part of the proof of debt to—

(a) the company, and

(b) each creditor mentioned in the statement of affairs of the company or who, not being so mentioned, personally lodges a proof.

(6) Where the company knows or believes that the proof of debt is false in a material particular, the company shall inform the liquidator as soon as it is reasonably practicable.

(7) The liquidator shall examine a proof of debt lodged with the liquidator and if after considering the representations made by the company or any other creditor, it appears to the liquidator that—

(a) an item is improperly included,

(b) a value is incorrectly stated, or

(c) the proof is otherwise incorrect,

the liquidator shall give notice of the objection to the creditor who may lodge an amended proof within the period specified in the notice or the period that the liquidator may permit.

(8) Where the liquidator is satisfied with a proof of debt, the liquidator shall give notice to the creditor of the admission of the proof of debt subject to verification under section 104.

(9) The liquidator shall give notice to the creditor that the liquidator rejects the proof of debt where a creditor fails to lodge an amended proof of debt or a further amended proof of debt within the period permitted under subsection (7), and the liquidator maintains that the previous proof of debt is incorrect.

(10) The liquidator may by notice in the Companies Bulletin fix a time within which creditors are to prove the debts or claims of the creditors or for those creditors to be excluded from the benefits of a distribution made before the debts are proved.

Section 112—First meeting of creditors after appointment of liquidator

(1) The liquidator shall—

(a) call a first meeting of creditors for a date within six weeks after the appointment of the liquidator,

(b) give the notice of the meeting that may be practicable to each creditor who—

(i) is mentioned in the statement of affairs of the company, or

(ii) not being so mentioned, has lodged a proof of debt, and

(c) publish the notice in a daily newspaper of national circulation and in the Companies Bulletin.

(2) Subject to paragraph (a) of subsection (1) the meeting shall be closed not later than eight weeks after the appointment of the liquidator.

(3) The liquidator shall provide each creditor of the company with a copy of the statement of affairs of the company and of the proposals for an agreement with creditors lodged by the creditors together with the observations on the proposals that the liquidator intend to make before the date of the meeting.

(4) The liquidator shall put to the meeting questions that the liquidator considers appropriate, and where the company has proposed an agreement with creditors, the meeting shall be asked to approve or reject the proposal.

(5) An agreement with creditors is not approved unless the agreement has secured at least fifty-one percent of the votes cast.

(6) A meeting of creditors of a company shall not proceed unless there is a quorum of at least three creditors with admitted proofs of debt, or the creditors if they are less than three, are present in person or by proxies.

(7) When a quorum is not present within half an hour after the time appointed for the commencement of the meeting of creditors, the liquidator shall adjourn the meeting to a date that the liquidator may determine but which is not less than seven days or more than fourteen days after the original meeting.

(8) If a quorum is not formed within half an hour after the time appointed for the commencement of the meeting, the meeting shall be considered cancelled.

(9) The cancellation of a meeting under subsection (8) shall not prevent the Court from the consideration and the determination of a matter as if the meeting had been held and closed on the day on which the was cancelled.

(10) Subsection (9) does not authorise the Court to confirm an agreement with creditors which has not been approved by a meeting of creditors.

(11) The liquidator shall preside over the meeting of creditors and at the meeting, each creditor with an admitted proof is entitled to be heard in person or by a proxy.

(12) Subject to sections 80 to 148, questions at a meeting of creditors shall be by a simple majority of the votes cast and each creditor with an admitted proof is entitled to cast a number of votes proportionate to the value which the amount of debt owed to that creditor bears to the aggregate of the debts owed to all creditors or if there is more than one class of creditors, to the aggregate of the debt owing to all creditors of the class to which the creditor belongs.

(13) For the purpose of voting, the net amount of a debt shall be calculated by deducting the following amounts from the total value of the debts owed to the creditor:

(a) the total value of securities held by the creditor;

(b) the total value of obligations outstanding in the favour of the company against the creditor, and

(c) the amount of each dividend to which the creditor has become entitled.

(14) For the purposes of this section, "admitted proof" means a proof of debt which has been found satisfactory upon an examination by the liquidator for the whole or part of an amount being claimed under this section.

Section 113—Consulting creditors and members

(1) Subject to sections 80 to 148, the liquidator shall,

(a) report to the creditors at intervals of not more than six months on the progress of the liquidation,

(b) consult the creditors on the matters arising in proceedings which substantially affect their interest, and

(c) give effect, to the views expressed by the creditors in relation to the realisation and distribution of assets.

(2) The liquidator may, in accordance with subsection (1), call a meeting of the creditors at any time, and if required to do so, by notice in writing signed by the creditors whose votes exceed one-fifth of the total number of votes which would be cast at the meeting.

(3) Subsections (6) to (13) of section 112 apply in relation to a meeting of creditors called under this section.

(4) The liquidator shall, subject to this section, in the event of an official winding-up that continues for more than one year,

(a) summon a general meeting of the company and a meeting of the creditors

(i) at the end of the first year from the commencement of the winding-up and of each succeeding year; or

(ii) at the first convenient date within three months from the end of the year or a longer period that the liquidator may allow;

(b) lay before the meeting an account of the—

(i) acts and dealings of the liquidator,

(ii) conduct of the official winding-up during the preceding year, and

(iii) trading of the company, showing the time that the business of the company has been carried on, and

(c) publish in the Companies Bulletin a copy of the account within twenty-eight days after the meeting.

Section 114—Committee of creditors

(1) The creditors shall have the right to set up a committee of creditors that will be accountable to the entire body of creditors.

(2) The members of the Committee of creditors shall not be more than five.

(3) The creditors shall determine the conditions of appointment of the members of the Committee.

(4) The expenses incurred in the performance of the duties of the Committee shall be considered as part of the cost of liquidation.

(5) The Committee shall approve transactions that substantially affect the interest of the Committee including payments out of assets, dispositions and contracts.

Section 115—Private examination by Court

(1) The liquidator may summon before the Court—

(a) an officer of the company,

(b) a person known or suspected of being in possession of any property of the company,

(c) a person indebted to the company, or

(d) a person whom the liquidator considers capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company after the making of a winding-up order.

(2) The Court may examine on oath a person summoned before the Court by word of mouth or on written interrogatories and may reduce the answers to writing.

(3) The Court may require a person summoned before the Court to produce the books, records, returns and other relevant documents in the custody or power of that person relating to the company.

(4) Where a person claims a lien on the books, records returns and other documents produced, the production shall not be affected by the lien, and the Court may determine in the official winding-up the question relating to that lien.

(5) Where a person summoned under this section after being tendered a reasonable sum of money for expenses, refuses to come before the Court at the time appointed, without reasonable excuse that is made known to the Court at the time of the sitting of the Court and allowed by the Court, the Court may order the arrest of the person for examination by the Court.

Section 116—Application to Court for inquiry into the conduct of persons in relation to company

Where the circumstances require, the liquidator shall apply to the Court for an enquiry into the conduct of a person as regards the activities of that person in relation to the company.

Section 117—Order against fraudulent or delinquent persons

(1) Where, in the course of the official winding-up of a company, it appears that a business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for a fraudulent purpose, the Court may, on the application of—

(a) the liquidator,

(b) a creditor, or

(c) a member or contributory of the company declare that the persons who were knowingly parties to the carrying on of that business in the manner stated are personally responsible, without a limitation of liability to the debts or any of the debts or any other liabilities of the company that the Court may direct.

(2) On the hearing of an application, the liquidator may personally give evidence or call witnesses.

(3) Where the Court makes a declaration, the Court may give any other directions to give effect to the declaration, and in particular may provide for making the liability of a person under the declaration a charge on—

(a) a debt or an obligation due from the company to that person, or

(b) a mortgage or charge or an interest in a mortgage or charge on the assets of the company held by or vested in

(i) that person or a company,

(ii) a person on behalf of that person,

(iii) a person claiming as an assignee from or through the person liable, or

(iv) a company or person acting on behalf of that person and may make any further order that may be necessary to enforce a charge imposed under this subsection.

(4) For the purposes of this section, the expression "assignee"

(a) includes a person who or in whose favour, by the directions of a person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; and

(b) does not include a person specified in paragraph (a) contracted for valuable consideration, other than consideration by way of marriage, given in good faith and without notice of the matters on the grounds of which the declaration is made.

Section 118—Penalty for carrying on business with intent to defraud

(1) Where a business of a company is carried on with the intent and for the purpose mentioned in subsection (1) of section 117, a person who was knowingly a party to the carrying on of the business in the manner described in section 117, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and imprisonment.

(2) If a person who contravenes subsection (1) is a director, the person is liable to be disqualified from acting as a director for five years.

(3) The provisions of section 117 and this section shall have effect despite the fact that the person concerned may be criminally liable regarding the matters on the grounds on which the declaration is to be made.

(4) Where a declaration under subsection (1) of section 117 is made, the declaration is a final judgment of the Court, for the purposes of sections 80 to 147.

Section 119—Duty of director to prevent insolvent trading

A director who causes a company to engage in any form of business or trade or incur a debt or liability where that director—

(a) has reasonable grounds to believe that the company is insolvent, or will become insolvent, or

(b) ought to have known at the time of causing the company to engage in the business or trade or incur the debt or liability that the company was insolvent or would become insolvent as a result of incurring that debt

commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both.

Assets Available for Winding-up

Section 120—Property in the custody or under the control of the liquidator

The liquidator shall make available the property of the company in the custody of the liquidator in accordance with section 92 for the purposes of the official winding-up.

Section 121—Repayment by preferred creditors

Where, at the time between the making of a winding-up order and the end of the liquidation of the company, it appears to the liquidator that, during the twelve months ending with the commencement of the winding-up and at a time when the company was insolvent the company—

(a) made a payment or any other transfer of property,

(b) paid a mortgage or any other charge, or

(c) suffered a judgment or incurred any other obligation

with the intent that any of the creditors should benefit at the expense of others, the liquidator shall give notice to the creditor so preferred and require that creditor, within the period specified in the notice, to restore to the liquidator whether by payment of money, transfer of property or surrender of rights, the benefit which has accrued to the creditor by reason of the creditor being preferred.

Section 122—Restoration of property

(1) On the commencement of a winding-up, a person who received payment of money or any other transfer of property during the relevant period regarding a debt owed to that person by the company, shall restore the property or the value of the property to the liquidator on receipt of a notice given in that behalf by the liquidator.

(2) For the purpose of subsection (1), the expression "relevant period" means the period that commences twenty-one days before the presentation of the petition on which the winding-up order was made or, if made on two or more petitions, before the presentation of the first petition, and ends with the making of the winding-up order.

(3) Subsection (1) does not apply to a payment or any other transfer of property—

(a) made by the company to the banker of the company in so far as the payment has been subsequently made by the bank in meeting cheques drawn by the company,

(b) made regarding a debt incurred during the relevant period,

(c) made in respect of a secured debt, or

(d) made on the enforcement against a third party of a guarantee or indemnity or of a mortgage, charge or lien on the property of that party.

(4) On the commencement of the winding-up, the property in the possession of the bailiff at the time of the making of the winding-up order, which is property of which possession was taken under an execution issued by a creditor of the company or the proceeds of that property shall be transferred to the liquidator, after deduction of the charges of the bailiff for the execution.

(5) Where a person has complied with subsection (1) or a notice given under section 121, that person may lodge a proof of debt or require the liquidator to amend the proof within one month after the notice was given, to enable the debt regarding the notice given to rank for dividend at the value which is appropriate in view of the compliance.

Section 123—Reversal of transactions

(1) Where it appears to the liquidator that the company made a disposition of the property of the company otherwise than for full value or in settlement of a due debt or incurred an obligation otherwise than for full value,

(a) during the two years ending with the making of the winding-up order, or

(b) more than two years but less than ten years before the making of the winding-up order and at a time when the company was insolvent,

the liquidator may give notice to the person to whom the disposition was made or for whose benefit the obligation was incurred, requiring that person within the period specified in the notice, to restore to the liquidator, whether by payment of money, transfer of property or surrender of rights, the excess of the benefit which accrued to that person above the value of the consideration provided.

(2) Transactions at an undervalue may be allowed where the transactions

(a) were made in good faith to carry on the business of the company;

(b) were made at a time when there were reasonable grounds to believe that the transaction would benefit the company;

(c) were not made at a time that the directors were aware that the company was insolvent or the transactions themselves yes made the company insolvent.

(3) Excess benefit restored under subsection (1) shall be treated as a provable debt in respect of which a proof may be lodged within one month after the restoration except where a director of a company commits a breach of duty under the Companies Act, 2019 (992).

Section 124—Payment by money-lenders

Where, between the making of a winding-up order and the end of the liquidation, it appears to the liquidator that during the ten years ending with the making of the winding-up order, a sum of money was paid or allowed by the company in respect of a loan in circumstances in which the Court would have ordered the lender to make a repayment to the company, the liquidator may give notice to the lender requiring the lender, within a period specified in the notice, to make a like payment to the liquidator.

Section 125—Avoidance of assignment and floating charges

(1) A conveyance or an assignment by a company of a property to trustees for the benefit of the creditors of the company is void.

(2) A property covered by subsection (1) or a floating charge invalidated under the Companies Act shall be dealt with as part of the general assets of the company.

Section 126—Call on contributories

(1) The liquidator may—

(a) make calls on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability—

(i) for the payment of moneys which the liquidator considers necessary to satisfy the debts and liabilities of the company, the cost, charges and expenses of the winding-up, and

(ii) for the adjustment of the rights of the contributories among themselves; and

(b) make an order for the payment of the calls so made after the making of a winding-up order, and before or after the liquidator has ascertained the sufficiency of the assets of the company.

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

(3) The liquidator may order a contributory, purchaser or any other person from whom money is due to the company to pay the amount due into the Liquidator Fund specified by the liquidator instead of making the payment to the liquidator, and the order may be enforced in the same manner as if the order had directed payment to the liquidator.

(4) An order or call made by the liquidator under this section is conclusive evidence subject to the right of appeal, that the money that appears to be due or ordered to be paid is due.

(5) A call made by the liquidator shall have the same effect as an order of the Court, for the purpose of recovering a sum of money due.

Section 127—Sums to be credited to Official Account of the company

(1) The liquidator shall open an Official Account of the company, within the Liquidation Fund for each company in respect of which the liquidator is a liquidator.

(2) The liquidator shall credit the account with the—

(a) moneys received by the liquidator in respect of the company by virtue of this section;

(b) payment made to the liquidator to increase the assets available for dividends; and

(c) repayments regarding excess dividends made under subsection (3) of section 130.

(3) Where, on the application by the company or by a creditor, it appears to the Court before the termination of the liquidation that, assets have been lost to the estate by reason of a default by the liquidator, the Court may order that—

(a) the Official Account of the company be credited with a sum of money that the Court considers just, and

(b) an equivalent sum of money be debited to the Fees Account.

Distribution of Assets

Section 128—Disclaimer

(1) The liquidator may, within one year after the commencement of the winding-up, by notice published in the Companies Bulletin, disclaim the property of the company vested in the liquidator if the liquidator is of the opinion that the property will not benefit the creditors.

(2) Where a person interested in the property has by application in writing required the liquidator to elect whether the liquidator disclaims the property or not and the liquidator fails to disclaim within one month after the application or a longer period that the Court may allow, subsection (1) shall not apply.

(3) The Court may, on the application of a person interested, give the relief and make any other provision that the Court considers just in consequence of the disclaimer under subsection (1).

(4) The disclaimer shall operate 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.

(5) The disclaimer shall not affect the rights or liabilities of any other person except where necessary in order to release the company and the property of the company from liability.

Section 129—Fees and outgoings

(1) The liquidator may withdraw sums of money from the assets of the company sufficient to satisfy fees of the prescribed amount charged in respect of the liquidation.

(2) When the fees become due to the liquidator in respect of a company, the liquidator shall cause the fees to be paid by a transfer of the necessary sums of money from the Official Account of the company to the Fees Account which shall be opened for the purposes of paying fees.

(3) When the rent, rates, charges or any other outgoings fail to be met by the liquidator in respect of the company, the liquidator shall cause the rent, rates, charges and other outgoing to be paid out of the Official Account of the company.

Section 130—Dividends to creditors

(1) Subject to section 129, the liquidator shall from time to time, and as early as practicable, declare and distribute dividends to creditors.

(2) The liquidator shall ensure that—

(a) provision is made for the payment in full of the Class A debts before a dividend is declared in respect of Class B debts and so on throughout the classes;

(b) the debts within one class are ranked simultaneously and equally;

(c) payment is made only in respect of debts which rank for dividends and shall not exceed the values of the dividends;

(d) where a security held by a creditor has not yet been reduced or surrendered, the value of the debt against which the security is held is to be treated as reduced by the value of the security; and

(e) interest is not allowed regarding a period after the commencement of the winding-up.

(3) Where a dividend is paid under subsection (2) in respect of a debt which is subsequently struck out and reduced in value by an amendment of the admitted proof, the creditor shall repay to the liquidator the difference between the amount of the dividend and the amount which should have been paid in the light of the amendment.

(4) Where a dividend is paid in respect of a debt and the debt is subsequently increased in value by an amendment of the admitted proof, the liquidator shall pay to the creditor the difference between the amount of the dividend and the amount which, in the light of the amendment, should have been paid so far as may be practicable, without a disturbance to dividends already declared.

(5) Where a creditor has omitted to lodge a proof of debt during the period permitted by this Act, or has omitted a provable debt from the proof, the creditor may apply to the Court for relief during the liquidation.

(6) Where the Court is of the opinion that the omission is excusable, it shall make an order requiring the liquidator to pay to the creditor the sum of money that would have been payable to the creditor under this section if the omission had not occurred, so far as may be practicable without a disturbance to dividends already declared.

(7) Where at the end of a period of one year after the declaration of a dividend stated by the liquidator to be the final dividend, payments under that or a previous dividend remains outstanding because the creditors in question cannot be found, the liquidator shall—

(a) cancel the payment, and

(b) declare a further dividend in favour of the remainder of the creditors unless payment in full has been achieved.

(8) In the case of a final dividend, or a further dividend declared under subsection (7), payment of less than four hundred currency points shall not be required to be made.

(9) Payment under this section shall be made from the Official Account of the company.

(10) Property which has not been converted into money may be transferred to a creditor in place of the equivalent amount of money if the creditor consents.

Section 131—Distribution to members

(1) Subject to sections 80 to 148, the assets of a company shall be applied in satisfaction of the liabilities of the company simultaneously and equally on the official winding-up of the company.

(2) Subject to the application under subsection (1), the assets of a company shall be distributed among the members according to their rights and interests in the members according to the rights and interests of the members in the company, unless the constitution of the company otherwise provides.

Section 132—Disposal of unclaimed assets

Where a balance remains in the Official Account of the company after provision is made for the payment and transfer of assets under sections 129 to 131, the Court may order that the balance be transferred to the Fees Account and give directions for the disposal of a assets not converted into money.

Section 133—Payment out of Official Account of Company and Fees Account

(1) A person is not entitled to a payment regarding any action taken by the liquidator in relation to a company except out of a balance in the Official Account of that company, or out of assets otherwise vested in the liquidator in respect of the company under this Act.

(2) Costs awarded against the liquidator in any proceedings shall be paid out of the Fees Account.

(3) During the continuance of liquidation, a person shall not be required to—

(a) supply goods,

(b) render services, or

(c) otherwise perform an obligation

under a contract entered into with the company before the commencement of the winding-up, unless that person has received an assurance from the liquidator that the assets of the company are sufficient to enable the goods or services to be paid for, or the discharge of the obligations otherwise recompensed, in accordance with the terms of the contract.

(4) Despite subsection (1), if an assurance given under subsection (3) proves incorrect, the person to whom the assurance was given is entitled to be reimbursed out of the Fees Account.

Termination of Proceedings

Section 134—Order to terminate proceedings

(1) After the completion of the winding-up of a company and the drawing up of the financial statements which have been approved by an auditor appointed by the creditors, the liquidator shall apply to the Court for an order to terminate the liquidation proceedings.

(2) The liquidator shall give notice of the application to each creditor with an admitted proof together with a summary of the final statements.

(3) The liquidator shall send a copy of the financial statements to the Registrar for registration and shall attach to the financial statement a statement that shows—

(a) that an application has been made for an order under section 117, or

(b) that grounds do not exist for an application.

(4) The Court shall grant the application if satisfied with the application by the liquidator.

(5) The Registrar of the Court shall send a copy of the order made by the Court to the Registrar for registration.

Section 135—Dissolution of company

(1) When satisfied that the official winding-up of a company is complete, the Registrar shall strike the name of the company off the register and notify that fact in the Companies Bulletin and in a daily newspaper of national circulation, and the company is, for the purposes of this Act dissolved as at the date of the publication of the notification in the Companies Bulletin and in a daily newspaper of national circulation.

Section 136—Disposal of books and papers of company on dissolution of the company

(1) The liquidator shall preserve the books, records, returns and other documents of the company and of the liquidator for a period of seven years after the dissolution of the company.

(2) The liquidator may dispose of all books, records, returns and other documents of the company after the expiration of the seven year period unless the Registrar otherwise directs, in which event the liquidator shall not dispose of the books, records, returns and documents until the Registrar has consented in writing to the disposal.

Section 137—Restoration of company

(1) The Court may, where a company is dissolved, make an order within five years after the date of the dissolution, on the terms determined by the Court, to declare the dissolution as void and to order the name of the company to be restored to the register on application made by—

(a) the Registrar,

(b) a former officer, member or creditor of the company, or

(c) a person claiming through or under any of the persons named in paragraph (b) for the purpose.

(2) The Registrar shall, on the order of the Court, restore the name of the company to the register and the company shall be deemed to have continued in existence as if the company had not been dissolved.

(3) An official copy of the order made under subsection (1) shall be delivered to the Registrar for registration and the Registrar shall publish the copy in the Companies Bulletin.

(4) For the purposes of a period of limitation, time does not run during the period between the dissolution and the restoration.

(5) The Court may give the directions and make the provisions as the Court considers just for placing the company and any other person in the same position as nearly as possible as if the name of the company had never been struck off.

Supplementary Provisions on Official Liquidation

Section 138—Stay of winding-up proceedings

(1) The Court may, on an application by the liquidator, creditor, member or contributory, make an order to stay proceedings regarding the winding-up, where the Court is satisfied on proof by the applicant that proceedings ought to be stayed.

(2) The Court may make the order to stay the proceedings altogether or for a limited period and on the terms and conditions determined by the Court.

(3) The Court may require a person to furnish the Court with a report regarding the facts or matters which are in opinion of the Court relevant to the application before making an order.

(4) The Court may order the company or any other person to forward a copy of an order made by the Court to the Registrar.

(5) The Registrar shall record the order in the books of the Registrar in respect of the company and in Companies Bulletin and in a daily newspaper of national circulation after the receipt of the order.

Section 139—Arrest of person who impedes winding-up proceedings

(1) Where an order for winding-up of a company is made and before the completion of the liquidation, it appears to the Court that the proceedings of the winding-up are or may be impeded because a member or contributory, an officer of the company or any other person whom the Court considers likely to help in the successful completion of the liquidation or whose conduct is impeding or may impede the winding-up—

(a) has absconded or is likely to do so;

(b) has removed, concealed, destroyed or damaged property of the company or is likely to do so; or

(c) is likely to fail to attend as required before the Court, the liquidator or a meeting of creditors,

the Court may issue a warrant for the arrest of that person or the seizure of the property or for both the arrest and the seizure.

(2) Where a warrant of arrest is issued, the provisions of the Criminal and other Offences (Procedure) Act, 1960 (Act 30) relating to arrest apply in the manner that the provisions apply to arrest for a criminal offence, and a person arrested under that warrant shall be conveyed from custody to a hearing by the Court for the necessary orders to be made for the purpose of the winding-up proceedings.

(3) Property seized under subsection (1) shall be dealt with in a manner that the Court may direct but a property which does not belong to the person and is not likely to be subject to the powers of the liquidator shall revert to the owner of the property as soon as practicable.

Section 140—Offences

(1) A person, other than the official liquidator, who contravenes a duty imposed on that person under this Act, commits an offence and is liable on summary conviction to a fine of not less than three hundred penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than eighteen months and not more than three years or to both.

(2) Subsection (1) does not limit the power of the Court to issue a warrant under section 139, or to punish a person for contempt of court or for an offence under the Criminal Offences Act, 1960 (Act 29).

Section 141—Prosecution of fraudulent or delinquent persons

(1) Where it appears to the Court in the course of the official winding-up, that a past or present officer or member of the company has committed an offence in relation to the company for which that officer or member of the company is criminally liable, the Court may, on the motion of the Court or on an application by a person interested in the official winding-up, direct the liquidator to refer the matter to the Attorney-General.

(2) Where it appears to the liquidator in the course of an official winding-up that a past or present officer or member of the company has committed an offence in respect of the company for which that officer or member is criminally liable, the liquidator shall immediately—

(a) report the matter to the Attorney-General,

(b) furnish the Attorney-General with the information, and

(c) give the Attorney-General access to the facilities for inspection and obtaining copies of the documents, in the possession or under the control of the liquidator that relate to the matter in question that the Attorney-General may require.

(3) Where a report is made under subsection (1) and (2) to the Attorney-General, the Attorney-General may give directives for an enquiry to be made.

(4) The Attorney-General shall investigate the matter and may, if it is expedient, apply to the Court for an order to confer on the Attorney-General or a person designated by the Attorney-General for that purpose with respect to the company concerned, the power provided by the Companies Act, 2019 (Act 992) to investigate the affairs of the company.

(5) Where it appears to the Court in the course of an official winding-up that—

(a) a past or present officer or a member of the company has committed an offence as specified in subsection (2), and

(b) a report has not been made with respect to the offence by the liquidator to the Attorney-General,

the Court may direct the liquidator to make the report on the application of the person interested in the official winding-up, or on the motion of the Court.

(6) Where a report is made under this section it shall have effect as though the report has been made in accordance with subsection (2).

(7) Where a matter is reported or referred to the Attorney-General under this section and the Attorney-General considers that the case is one for which prosecution ought to be instituted, the Attorney-General shall institute the prosecution, and the liquidator and each officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Attorney-General and the liquidator the assistance in connection with the prosecution which that officer or agent is reasonably able to give.

(8) For the purpose of subsection (7),"agent" in relation to a company, includes a banker or solicitor or counsel of the company and a person employed by the company as auditor, whether or not that person is an officer of the company.

(9) Where a person fails or neglects to give assistance in the manner required by subsection (7), the Court may direct that person to comply with the requirements of that subsection on the application of the Attorney-General.

(10) Without limiting subsection (9), the Court may direct that the costs of the application shall be borne by the liquidator personally unless it appears that the failure or neglect to comply was due to the fact that the liquidator did not have sufficient assets of the company at the time to enable the liquidator to do so.

Section 142—Inspection of books of company

(1) The Court may, make an order that the Court considers just, after making a winding-up order for the creditors, members or contributories to inspect the books and papers of the company and the inspection shall be carried out accordingly, but not further or otherwise.

(2) Subsection (1) does not exclude or restrict the statutory rights of il government department or a person acting under the authority of a Government department.

Section 143—Notification of liquidation

(1) Where a company is being wound up, an invoice, order or a business letter or any document issued by or on behalf of the company on which the name of the company appears, shall contain a statement that the company is being wound up and shall have the phrase "in official liquidation" or " in liquidation" as is applicable, affixed after the name of the company.

(2) An officer of the company or a liquidator, who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Section 144—Exemption from stamp duty

(1) In the official winding-up of a company, the company is exempt from stamp duties chargeable under an enactment in respect of,

(a) an assurance which relates solely to—

(i) freehold or leasehold property,

(ii) a mortgage, charge or any other encumbrance on a property, or

(iii) an estate, a right or an interest in, property which forms part of the assets of the company and which, after the execution of the assurance, at law or in equity, is or remains part of the assets of the company, and

(b) a power of attorney, a proxy paper, a writ, an order, a certificate, an affidavit, a bond or any other instrument or writing that relates solely to the property of a company which is being wound up, or to the proceedings under that winding-up.

(2) For the purpose of subsection (1), "assurance" includes a deed of conveyance, an assignment and a deed of surrender.

Official Liquidation of Other Bodies Corporate

Section 145—Winding-up of other bodies corporate

Subject to this section and to sections 146 to 149, a body corporate which,

(a) has or had an office or place of business in Ghana, or

(b) has assets situated in Ghana may be wound up by way of official liquidation under this Act and sections 81 to 144 shall apply to that body corporate as if that body corporate were a company.

Section 146—Exclusion of certain bodies corporate

Despite section 145, a body corporate shall not be wound up under this Act if the body corporate is—

(a) a firm incorporated under the Incorporated Private Partnerships Act, 1962 (Act 152), or

(b) a body corporate formed by or under an enactment which makes specific provision for the winding-up of bodies corporate formed by or under that enactment.

Section 147—Application to foreign bodies corporate

(1) A body corporate incorporated outside the Republic may be wound up under this Act although the body corporate has been dissolved or otherwise ceased to exist under or by virtue of the laws of the country under which that body corporate was incorporated.

(2) Where an order is made for the official winding-up of a body corporate incorporated outside the Republic, the Court may, in the winding-up order or on subsequent application by the liquidator, direct that—

(a) the branch of that body corporate in Ghana shall be treated as a separate body corporate,

(b) the assets and liabilities situate in Ghana shall be treated as the assets and liabilities of that body corporate for the purposes of the winding-up, and

(c) the transaction by or with that branch shall be deemed to be validly done although that transaction occurred after the date when the body corporate was dissolved or otherwise ceased to exist under or by virtue of the laws of the country under which that body corporate was incorporated.

Section 148—Winding-up by the Court

A body corporate shall not be wound up except on a petition to the Court in accordance with section 84.

Section 149—Grounds for winding-up

(1) In the application of this section to a foreign body corporate, subsection (2) shall be substituted for subsection (2) of section 84.

(2) The Court may, on a petition, order the official winding-up of a body corporate if,

(a) the body corporate is dissolved, has ceased to carry on business, or is carrying on business only for the purpose of winding-up the affairs of the company;

(b) the body corporate is unable to pay the debts of the company;

(c) the Court is of the opinion that—

(i) the business or objects of the body corporate is or are unlawful,

(ii) the body corporate is being operated for an illegal purpose, or

(iii) the body corporate is carrying on a business or operation not authorised by the constitution of that body corporate; or

(d) the Court is of the opinion that it is just and equitable that the body corporate winds up.

(3) In the determination of whether the body corporate is unable to pay the debts of that body corporate, subsection (3) of section 83 applies.

Cross-border Insolvency

Section 150—Cross-border insolvency proceedings

The purpose of sections 151 and 152 is to provide effective mechanisms for cross-border insolvency proceedings to—

(a) Promote co-operation between a Court and other competent authorities of Ghana and foreign states involved in cases of cross-border insolvency;

(b) Provide legal certainty for trade and investment;

(c) Provide for the fair and efficient administration of cross-border insolvencies that protect the interests of creditors and debtors and other interested persons;

(d) Provide protection over the value of assets of a debtor; and

(e) Protect and preserve investment and employment.

Section 151—Scope of application

(1) Sections 150 and 152 apply where assistance is required—

(a) in Ghana by a foreign country or a foreign representative in connection with a foreign proceeding; or

(b) by a Ghanaian Court or a Ghanaian representative in a foreign state in connection with an insolvency proceeding under this Act;

(c) in respect of a foreign insolvency proceeding and a proceeding under this Act, relating to the same company which us taking place concurrently; or

(d) by a creditor or other interested person of a foreign state in commencing proceedings or requesting the participation of proceedings commenced in Ghana in connection with the insolvency proceedings of a company under the Act.

(2) Sections 150 and 151 do not apply to a bank or financial institution within the meaning of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

Section 152—Rules and procedure

(1) Subject to the Rules of Court the matters set out in the Schedule shall apply to cases of cross-border insolvency proceedings.

(2) For purposes of cross-border insolvency proceedings, the Rules of Court Committee may make rules in relation to—

(a) the practice and procedure of the Court for cross-border insolvency proceedings;

(b) the manner in which an application in respect of a cross-border insolvency proceeding shall be made to Court; and

(c) generally to give effect to the provisions of the Schedule.

Regulation of Insolvency Services

Section 153—Establishment of Insolvency Services Division

(1) The Registrar shall, in pursuance of the Companies Act, 2019 (Act 992), the establish a division of the Office of the Registrar of Companies known as the Insolvency Services Division.

(2) The Registrar shall assign to the Insolvency Services Division, staff of the Office of the Registrar of Companies that are necessary for the proper and effective performance of the functions of the Division.

(3) The Insolvency Services Division shall perform the following functions:

(a) keep insolvency practice under the Companies Act, 2019 (Act 992), this Act and any other relevant enactment;

(b) keep under review the law and practice that relates to the insolvency of companies and other bodies corporate in the country and make recommendations to the Registrar on any changes considered necessary;

(c) oversee the administration, restructuring and insolvency proceedings of companies and other bodies corporate in the country;

(d) receive reports from liquidator and insolvency practitioners on the administration of insolvencies;

(e) receive reports from agents for debenture holders, trustees for security holders and auditors for companies in distress or insolvent situation to enable corrective measures to be taken;

(f) carry out research, commission studies, disseminate information and provide public education in the area of insolvency administration;

(g) establish and maintain communication and liaison with international agencies, including the International Commission on Trade Law, in the area of international insolvencies and insolvency administration as may be necessary for the efficient performance of the functions of the Division.

(h) advise the Minister through the Registrar generally on any matter relating to the law and practice of insolvency and insolvency administration; and

(i) perform any other functions required for the attainment of the objects of the Division;

(4) The Registrar is responsible for the day-to-day administration of the affairs of the Insolvency Services Division.

(5) The Registrar may delegate a function required to be performed by the Registrar for the purpose of the Insolvency Services Division but the Registrar shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Section 154—Meaning of insolvency practitioner

(1) Insolvency practitioner means

(a) a receiver under the Companies Act, 2019 (Act 992);

(b) a manager under the Companies Act, 2019 (Act 992);

(c) an administrator under this Act;

(d) a restructuring officer under this Act; or

(e) a trustee in bankruptcy under the Insolvency Act, 2006 (Act 708).

(2) Section 154 to 163 do not apply to the official liquidator.

Section 155—Qualification of insolvency practitioner

(1) A person is qualified to be an insolvency practitioner if—

(a) that person is a Chartered Accountant, a lawyer or a banker and that person is in good standing with a recognised professional association; and

(b) that person is certified as a restructuring and insolvency practitioner; and

(b) there is in force at the relevant time, security or professional indemnity for the proper performance of the duties of that person in accordance with the prescribed requirement.

(2) A person is not qualified as an insolvency practitioner if the person

(a) is a minor;

(b) is a body corporate;

(c) has been declared an undischarged bankrupt;

(d) is declared by a court of competent jurisdiction to be of unsound mind;

(e) is the subject of a prohibition order under section 159;

(f) is disqualified under the Companies Act, 2019 (Act 992) for fraudulent trading or is disqualified from holding an office under the Companies Act, 2019 (Act 992);

(g) has been convicted in the preceding five years of—

(i) an offence under this Act; or

(ii) a crime involving dishonesty or moral turpitude;

(h) is disqualified from acting as a liquidator, administrator, receiver, trustee or supervisor under this Act or any other enactment; or

(i) is subject to disciplinary proceedings or punishment under any law.

(3) A person who is a professional can only act as an insolvency practitioner if that person takes out an insurance policy for indemnity for any act or omission on the part of that person as an insolvency practitioner.

(4) For the purpose of paragraph (a) of subsection (1), "a recognised professional association" means the Institute of Chartered Accountants, the Ghana Bar Association or the Chartered Institute of Bankers.

Section 156—Acting as an insolvency practitioner without qualification

(1) A person who acts or purports to act as an insolvency practitioner contrary to section 155, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or both.

(2) An act carried out by a person who is not qualified to act as an insolvency practitioner while acting as an insolvency practitioner shall be valid unless the Court orders otherwise.

Section 157—Persons disqualified from acting as administrators

Despite section 155,

(a) a creditor of the company in liquidation or under administration or an associated company, or

(b) a person who has, within the previous two years been a shareholder, director, auditor or receiver of the company in liquidation or under liquidation or of any associated company,

is not eligible to act as an administrator or a restructuring officer.

Section 158—Conduct and performance of insolvency practitioners

(1) The Registrar shall keep under review the conduct and performance of insolvency practitioners.

(2) The Registrar may require

(a) an insolvency practitioner, or

(b) a person who is or has been an auditor of a company in which the insolvency practitioner has held office to furnish the Registrar with any document or information concerning an insolvency practitioner.

(3) The Registrar may receive representations from any person on the conduct and performance of an insolvency practitioner and shall within seven days after the receipt of the representation, disclose the substance of that representation to the insolvency practitioner and seek comments of the insolvency practitioner on the representation.

(4) A representation made to the Registrar and any communication of the terms of that representation made in confidence shall be protected by absolute privilege.

(5) Where the Registrar has a reasonable ground to suspect that—

(a) an insolvency practitioner has failed to comply with this Act in a manner that has or may materially affect—

(i) creditors,

(ii) contributories, or

(iii) persons who deal in good faith with a debtor, or

(b) the insolvency practitioner has been suspended or removed from the practice of—

(i) accountancy,

(ii) law, or

(iii) any other prescribed profession by a professional body in Ghana or by a comparable body outside Ghana,

the Registrar may enquire into the conduct and performance of the insolvency practitioner.

(6) For the purpose of an enquiry under subsection (5), the Registrar may, by notice in writing, require a director or shareholder of a company or any other person including the secretary of any relevant professional body to deliver to the Registrar the books, records, returns and other relevant documents of the company in the possession of that person or under the control of the person that are relevant to the subject matter of the inquiry as the Registrar so requires.

(7) The Registrar may, for the purpose of an enquiry under subsection (5), by notice in writing, require—

(a) a director or former director of a company,

(b) a shareholder of a company,

(c) a person who was involved in the promotion or formation of a company,

(d) a person who is, or has been, an employee of a company,

(e) a receiver, liquidator, administrator, accountant, auditor, bank officer or other person having knowledge of the affairs of a company, or

(f) a person who is acting or who has at any time acted as legal counsel for a company,

to do any of the things specified in subsection (8).

(8) A person referred to in subsection (7) may be required to—

(a) attend on the Registrar at a reasonable time and place that may be specified in a request;

(b) provide the Registrar with information about the business, accounts or affairs of the company as the Registrar requests; or

(c) be examined on oath by the Registrar or by a law practitioner acting on behalf of the Registrar on any matter relating to the business, accounts or affairs of the company;

(9) The Registrar may pay to a person referred to in paragraphs (c) and (f) of subsection (7) who is not an employee of the company, reasonable travel and other expenses in compliance with a requirement of the Registrar under subsection (8).

(10) An action or proceeding, including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall not lie against a person arising from disclosure in good faith of information to the Registrar in accordance with this section.

Section 159—Application to Court by Registrar

(1) Where the Registrar, considers as a result of the outcome of an enquiry under section 158 considers that there is reasonable ground to believe that the insolvency practitioner is unfit to act by reason of—

(a) failure to comply with this Act,

(b) misconduct or incompetence on the part of the insolvency practitioner, or

(c) any other sufficient cause

the Registrar may apply to the Court for a prohibition order under section 71 or 160.

(2) Where the Court makes a prohibition order, that fact shall be entered in the file kept under subsection (6) of section 71 and in the register of prohibited persons kept in accordance with subsection (4) of section 161.

Section 160—Prohibition order against an insolvency practitioner

(1) Where it is proved to the satisfaction of a Court that a person is unfit to act as an insolvency practitioner by reason of failure to comply or for any other sufficient cause, the Court shall make a prohibition order against the person for a period of not more than five years.

(2) Where there is evidence that on two or more occasions within the preceding five years, while a person was acting as insolvency practitioner—

(a) a Court made an order to that person to comply; or

(b) an application for an order to the person to comply has been made and that in each case that person has failed to comply after the application has been made and before the hearing, in the absence of any justifiable reasons to the contrary, this constitutes evidence of failure to comply within the meaning of this section.

(3) A person in respect of whom a prohibition order is made shall, with immediate effect cease to act as an insolvency practitioner.

(4) Proceedings including the decision of the Court that relate to an application for an order shall be served on the Registrar and the Registrar of the prescribed professional body.

(5) The Registrar shall keep a copy of the proceedings including the decision of the Court on a public file indexed by reference to the name of the insolvency practitioner concerned.

(6) In this section "failure to comply" means a failure of an insolvency practitioner to comply with a duty under—

(a) the appointing documents;

(b) this Act or any other enactment; or

(c) any order or direction of the Court other than an order to comply made under this section.

Section 161—Register of insolvency practitioners

(1) The Registrar shall keep and maintain a register of insolvency practitioners in which the Registrar shall enter the name, address, qualifications and any other information that the Registrar may reasonably require of each insolvency practitioner.

(2) An insolvency practitioner who is suspended or removed from the practice of accountancy or law or other prescribed profession by any professional body in this country or by a comparable professional body outside this country, shall give notice of that fact to the Registrar within seven days after the insolvency practitioner receives notice of the suspension or removal from practice of the profession.

(3) Where the Registrar—

(a) receives a notice under subsection (2);

(b) is otherwise advised by the professional body concerned; or

(c) has reasonable grounds to suspect that an insolvency practitioner has been suspended or removed by the relevant professional body from the practice of accountancy or law or other prescribed profession or is unfit to continue to act as an insolvency practitioner, after providing the insolvency practitioner with an opportunity to be heard,

the Registrar may suspend the insolvency practitioner from continuing in office as an insolvency practitioner, pending

(d) the making of further inquiries,

(e) the making of an application to the Court under section 160, or

(f) the making of a prohibition order by the Court.

(4) The Registrar shall enter against the name of the person concerned in the register of insolvency practitioners any of the following matters that may affect that person:

(a) that the person has been the subject of a prohibition order by the Court under section 71 or 160;

(b) that the person has been suspended or removed from the practice of accountancy or law or the practice of any other prescribed profession by any professional body in the country or

by any comparable body outside the country where the Registrar has received notice to that effect from the professional body or from the person concerned;

(c) that the person has died; or

(d) that the person has ceased to practise as an insolvency practitioner and requested the Registrar to remove the name of that person from the register.

Section 162—Disclosure to and consultation with Registrar

(1) Each person who holds or at any time has held office as an agent for debentures holders or trustee of holders of any security issued by a company or who has been an auditor of a public company shall disclose to the Registrar information that relates to the affairs of the company obtained in the course of holding that office where, in the opinion of the person—

(a) the company is insolvent, is likely to become insolvent or is in serious financial difficulties;

(b) the company has breached, or is likely to breach in a significant respect

(i) the terms of the agency deed or trust deed for debenture holders or other security holders; or

(ii) the terms of the offer of any securities; or

(c) the disclosure of the information is likely to assist, or be relevant to the exercise of any power conferred on the Registrar under this section.

(2) Each auditor or agent for debenture holders, trustee for security holders shall take reasonable steps to inform the company concerned of the intention to disclose information and the nature of the information before disclosing any information to the Registrar.

(3) The agent for debenture holders, trustee for security holders or the auditor who has made a disclosure to the Registrar,

(a) may on the initiative of the agent, trustee or auditor consult with the Registrar, or

(b) may be required by the directors to consult with the Registrar, on the position of the company and the way in which the difficulties of the company may be addressed.

(4) In order to address the difficulties of the company identified by a consultation under subsection (3), the Registrar may—

(a) give advice and assistance in connection with any scheme for resolving the difficulties of the company, or

(b) appoint an independent adviser to work with the company to address the difficulties and report to the Registrar.

(5) An action or proceedings, including disciplinary proceedings by a professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall not lie against any agent for debenture holders or trustee for security holders or auditor arising from the disclosure in good faith of information to the Registrar in accordance with subsection (1).

Section 163—Appointment of one or three insolvency practitioners

(1) One or three persons may be appointed as insolvency practitioners in any case where this Act provides for the appointment of an insolvency practitioner.

(2) Where one or three persons are appointed as insolvency practitioners of a company—

(a) the functions of the insolvency practitioner may be performed or exercised by a majority of the insolvency practitioners unless the order, instrument or resolution that appoints the insolvency practitioners provides otherwise; and

(b) the insolvency practitioners may act jointly and severally to the extent that the insolvency practitioners exercise the same powers unless expressly provided to the contrary in the appointing document.

(3) A reference in this Act to an insolvency practitioner refers to the insolvency practitioner or insolvency practitioners as the case requires.

Section 164—Qualified privilege in respect of proceedings for defamation

An insolvency practitioner shall have qualified privilege in any proceedings for defamation in respect of any matter included in a report or other document prepared under this Act.

Agreements

Section 165—Netting agreement

(1) Parties to a qualified financial contract shall, where a party becomes insolvent, treat the qualified financial contract in accordance with this Act, the Securities Industry Act, 2016 (Act 929) and the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) or any other applicable enactment.

(2) Subsection (1) does not apply to a qualified financial contract where the qualified financial contract contains a netting agreement.

(3) A netting agreement shall not—

(a) be regarded as a creditor claim; and

(b) affect the ranking of claims or distubution[sic] of dividends to creditors during insolvency.

Section 166—Enforcement of netting agreement

(1) Where a qualified financial contract contains provisions of a netting agreement, the netting agreement is enforceable in accordance with the terms of the contract including enforcement against an insolvent party and where applicable, enforcement against a guarantor or any other person who provided security for the insolvent party.

(2) An enforcement under subsection (1) shall not be stayed, avoided or limited by

(a) an action of the liquidator;

(b) any other enactment relating to bankruptcy, re-organisation, composition with creditor, receivership or any other insolvency proceedings that the insolvent party may be subject to; or

(c) any other enactment that may be applicable to the insolvent party.

(3) For the purposes of section 165 and this section, a "qualified financial contract" includes a financial agreement, contract or transaction which provides for a term or condition incorporated into the agreement by reference to another contract or transaction, pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain period of time such as—

(a) a currency, cross-currency or interest rate swap;

(b) a basis swap;

(c) a spot, future, forward or other foreign exchange transaction;

(d) a commodity swap;

(e) a forward rate agreement;

(f) a currency or interest rate future;

(g) a currency or interest rate option;

(h) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;

(i) a derivative relating to bonds or other debt securities or to a bond or debt security index such as a total return swap, forward option or index option;

(j) a credit derivative such as a credit default swap, credit default basket swap, total return swap or credit default option;

(k) an inflation or any other economic statistics derivative;

(l) a spot, future, forward or any other securities or commodities transaction;

(m) a securities contract including a margin loan and an agreement to buy, sell, borrow or lend securities;

(n) a commodities contract including an agreement to buy, sell, borrow or lend commodities;

(o) a collateral arrangement;

(p) an agreement to clear or settle securities transactions or to act as a depository for securities;

(q) any other agreements, contracts or transactions similar to an agreement, contract or transaction specified under paragraphs (a) to (p);

(r) any swap, forward, option, contract for differences or other derivatives in respect of, or combination of, one or more agreements;

(s) contracts referred to in paragraphs (a) to (q); and

(t) any other agreement, contract or transaction designated as a qualified financial contract by the Securities and Exchange Commission, the Bank of Ghana or any other relevant authority by notice published in the Companies Bulletin.

Miscellaneous Matters

Section 167—Regulations

(1) The Minister shall, within twelve months after the coming into force of this Act, by legislative instrument, make Regulations to—

(a) prescribe the fees to be paid under this Act;

(b) prescribe the thresholds to determine the inability of a company to pay the debts or other obligations of the company;

(c) prescribe the procedure for

(i) a meeting of creditors;

(ii) a meeting of shareholders;

(iii) a watershed meeting; and

(iv) the appointment, removal, resignation and filling of vacancies of insolvency practitioners;

(d) provide the criteria for proving debts;

(e) provide for reporting procedures;

(f) provide for matters in relation to cross-border insolvency proceedings; and

(g) provide for any other matter necessary for the effective implementation of the provisions of this Act.

(2) Then Minister shall, in making Regulations under paragraph (f) of subsection (1), be satisfied that—

(a) the Republic and the foreign country concerned are parties to an agreement for mutual recognition of insolvency proceedings;

(b) the level of recognition given to the interest of Ghanaian debtors and creditors in an insolvency proceeding in the foreign country and the terms of the agreement referred to in paragraph (a) provide protection for the interest of debtors and creditors in the country; or

(c) it is in the public interest to do so.

Section 168—Guidelines

The Registrar may issue guidelines in the respect of—

(a) Fees to be paid by insolvency practitioner;

(b) Any other matter necessary for the effective implementation of this Act; and

(c) Remuneration of the administrator or the restructuring officer.

Section 169—Interpretation

In this Act, unless the context otherwise requires,

"administration" means a process of enabling the rehabilitation of a company that is financially distressed beginning when an administrator is appointed to perform duties necessary to achieve the objects laid out in subsection (1) of section 1 and ending as set out in subsection (2) of section 2;

"administrator" means the person who is appointed the administrator of a company in administration;

"agreement" means restructuring agreement referred to in section 44;

"appointing document" means the document that appoints an insolvency practitioner;

"body corporate" means a corporation formed under the Companies Act, 2019 (992) or otherwise and whether in Ghana or elsewhere but does not include the corporation sole such as an incorporated office;

"Companies Act" means the Companies Act, 2019 (Act 992);

"Companies Bulletin" means the record of official statements kept and maintained by the Registrar of Companies in respect of company matters provided for by any relevant enactment;

"company" means a body formed and registered under the Companies Act;

"constitution" means the rules and regulations of a company established in accordance with the Companies Act;

"contingent creditor" means a person towards whom, under an existing obligation, the company may or will become subject to a liability on the occurrence of a future event;

"contributory" includes

(a) a person liable to contribute to the assets of a company in the event of the company being wound up,

(b) a person alleged to be a contributory for the purpose of the proceedings for determination, and the proceedings, before the final determination of the persons who are to be deemed to be contributories;

"convening period" has the meaning assigned to it by section 24;

"Court" means High Court;

"enforcement process" in relation to property, means

(a) execution against property; or

(b) any other court process in relation to that property;

"insolvency statement" in relation to a company includes

(a) statement of financial position;

(b) statement of comprehensive income;

(c) statement of changes in equity;

(d) statement of cash flows; and

(e) description of significant accounting policies and explanation notes to the financial statements prepared in compliance with International Financial Reporting Standards approved or adopted by the Institute of Chartered Accounts or any other standards approved or adoption by the Institute;

"insolvency practitioner" has the meaning assigned to it in section 154;

"insolvent" means unable to pay debts as the debt fall due;

"liquidation" in relation to a company means the winding up of the company;

"liquidator" means the person other than the official liquidator who is responsible for the liquidation of a company;

"Minister" means the Minister responsible for Justice;

"negative net worth" means where the value of the assets of the company is less than the liabilities of the company taking into account the contingent and prospective liabilities of company;

"netting agreement" includes

(a) an agreement between two parties that provides for net settlement of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement, and entered into;

(b) an agreement between two parties that provides for the net settlement of the amount due under two or more agreements referred to in paragraph (a); or

(c) a collateral arrangement related to an agreement under paragraph (a) or (b) entered into by the parties under paragraph (a) or (b), before or after the coming into force of this Act;

"Office of the Registrar of Companies" means the corporate statutory body established to register and regulate companies under the Companies Act, 2019 (Act 992);

"official liquidation", in relation to a company, means the winding-up of a company carried out by the Registrar of Companies who is the official liquidator;

"official liquidator" means the Registrar of Companies;

"official winding-up" means a winding-up of a company under sections 80 to 144 of this Act;

"ordinary resolution" means a resolution by simple majority;

"Post-Commencement Financing" means any

(a) remuneration or reimbursement for expenses or any other amount of money relating to employment that becomes due and payable by a company to an employee during the business restructuring or administration proceedings of the company but that is not paid to the employee; and

(b) financing obtained by the company including trade financing and venture capital during the administration or restructuring proceedings of the company and may be secured to the lender by utilizing an asset of the company that is not otherwise encumbered;

"preference share" means a share which does not entitle the holder of the share to a right to participate beyond a specified amount in a distribution whether by the way of dividend, or on redemption in a winding-up or otherwise;

"preferential claim" means a claim which is a preferential debt in accordance with section 107 except for the payment of the fees and expenses properly incurred by the liquidator or administrator in carrying out the functions and duties of the liquidator or administrator;

"property" means movable or immovable property;

"prospective creditor" means a person to whom the company is indebted in a sum of money not immediately payable;

"provable debt" means an obligation, the value of which is capable of assessment in money, being

(a) an obligation which, apart from this Act, would have been enforceable by the creditor against the company at the date on which the winding-up commenced, or

(b) an existing or a future obligation, other than an obligation unenforceable by virtue of the law relating to limitation of actions, which by reason of a transaction took place before the date, which might apart from this Act, have become enforceable by the creditor against the company after that date,

and a reference in sections 80 to 148 to the value of a provable debt is a reference to the value apart from the value of the debt on that date;

"receiver" means

(a) a person appointed to take possession of property in receivership and deal with the property as directed by the Court or the instrument of appointment; and

(b) an insolvency practitioner as defined in section 154;

"Registrar" means Registrar of Companies;

"restructuring agreement" means the agreement that is executed by a company and the creditors of the company to provide for payments towards the debt of the creditors;

"restructuring officer" means the person who is appointed the administrator of a restructuring agreement;

"secured creditor" means a person entitled to a charge on or over an identifiable property owned by a debtor;

"set-off" means the application of a sum of money owed to a person in satisfaction or reduction against a claim by another party for a sum of money owed by that first person;

"special resolution" means a resolution of creditors passed in accordance with section 82;

"unsecured creditor" means a creditor whose debt is not secured by any asset of the company and does not fall into any other classes specified in subsection (3) of section 107;

"watershed meeting" means a meeting of creditors called by the administrator to decide the future of a company and, in particular, whether the company and the creditors should execute a restructuring plan or wind-up the company; and

"working day" means a weekday other than a public holiday.

Section 170—Section Repeal and savings

(1) The Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) is repealed.

(2) Despite the repeal of Act 180, the Regulations, notices, orders, directions, appointments or any other act lawfully made or done under repealed enactment and in force immediately before the commencement of this Act shall be considered to have been made or under this Act and shall continue to have effect until reviewed, cancelled or terminated.

Section 171—Transitional provisions

(1) The Minister shall, within two years after the coming into force of this Act, ensure that the Ghana Association of Restructuring and Insolvency Advisors is established under an Act to Parliament.

(2) Until the establishment of the Ghana Association of Restructuring and Insolvency Advisors under an Act of Parliament, the Association shall assist the Registrar of Companies to train and license existing insolvency practitioners.

SCHEDULE

(Section 152)

CROSS-BORDER INSOLVENCY PROCEEDINGS

General Provisions

1—International obligations of Ghana

An action shall not be taken within the meaning of this Schedule that conflicts with an obligation of Ghana arising out of any treaty or other form of agreement to which Ghana is a party with one or more other States.

2—Jurisdiction

The functions referred to in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by a court of competent jurisdiction.

3—Authorisation of insolvency practitioner to act in a foreign State

An insolvency practitioner is authorised to act in a foreign State on behalf of a Ghana insolvency proceeding, as permitted by the applicable foreign law.

4—Public policy exception

(1) Nothing in this Schedule prevents a Court from refusing to take an action if that action is contrary to the public policy of Ghana.

(2) Before the Court refuses to take an action under subparagraph (1), the Court shall consider whether to refer the case to the Attorney-General for consideration.

5—Additional assistance under other laws

Nothing in this Schedule limits the power of a Court or an insolvency practitioner to provide additional assistance to a foreign representative under any other law of the Republic.

Access of Foreign Representatives and Creditors to Courts in Ghana

6—Right of direct access

A foreign representative may apply directly to the Court.

7—Limited jurisdiction

An application pursuant to this Schedule made to the Court by foreign representative does not subject that foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

8—Application by a foreign representative to commence insolvency proceedings in Ghana

A foreign representative may apply to commence an insolvency proceeding in Ghana if the requirements for commencing such proceeding are met.

9—Participation of a foreign representative in an insolvency proceeding in Ghana

Subject to any enactment, a court may upon recognition of a foreign proceeding before the Court, permit a foreign representative to participate in an insolvency proceeding in Ghana regarding the debtor.

10—Access of foreign creditors to an insolvency proceeding in Ghana

(1) Subject to subparagraph (2), a foreign creditor has the same rights as a Ghanaian creditor regarding the commencement of, and participation in, an insolvency proceeding in Ghana.

(2) Subparagraph (1) does not affect the ranking of claims in an insolvency proceeding in Ghana or the exclusion of foreign tax and social security claims from such a proceeding.

11—Notification to foreign creditors of an insolvency proceeding in Ghana

(1) Where in relation to an insolvency proceeding in Ghana notification is required to be given to creditors in Ghana, the notification shall also be given to the known creditors that do not have addresses in Ghana.

(2) The notification shall be made to the foreign creditors individually, unless the Court determines that under the circumstances, some other form of notification is more appropriate.

(3) Letters, rogatory or other similar formality is not required.

(4) The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(5) Where a notification of commencement of a proceeding is required to be given to a foreign creditor, the notification shall—

(a) indicate a reasonable time period for filing claims and specify the address for filing the claim;

(b) indicate whether the secured creditor is required to file a secured claim; and

(c) contain any other information that is required to be included in the notification to creditors pursuant to this Act and the orders of the Court.

Recognition of a Foreign Proceeding and Relief

12—Application for recognition of a foreign proceeding

(1) A foreign representative may apply to the Court for an order to recognise a foreign proceeding in which that 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 confirming the existence of the foreign proceeding and the appointment of the foreign representative; or

(c) any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative, in the absence of evidence referred to in subsubparagraphs (a) and (b) of subparagraph (2).

13—Presumptions concerning recognition

(1) If the decision or certificate referred to in subparagraph (2) of paragraph 12 indicates evidence of the existence of a substantive foreign proceeding and the appointment of a person or body as a foreign representative the Court may, subject to the rules of Court presume the same and that the person or body is a foreign representative.

(2) The Court may presume that documents submitted in support of the application for recognition are authentic, whether or not the documents have been certified.

(3) In the absence of proof to the contrary, the registered office of the debtor, or habitual residence in the case of an individual is presumed to be the centre of the main interests of the debtor.

14—Decision to recognise a foreign proceeding

(1) Subject to paragraph 4, a foreign proceeding shall be recognised if—

(a) that foreign proceeding is taking place in the State where the debtor has the centre of the main interests of the debtor;

(b) the foreign representative applying for recognition is a person or body required to administer the re-organisation or the liquidation of the assets or affairs of a debtor or to act as a representative of the foreign proceeding;

(c) the application meets the requirements of subparagraph (2) of paragraph 12; and

(d) the application has been submitted to the Court.

(2) Subject to the Rules of Court, a foreign proceeding shall be recognised—

(a) as a foreign main proceeding if the proceeding is taking place in the State where the debtor has the centre of the main interests of the debtor; or

(b) if the proceeding is taking place in a State where the debtor has an establishment in the foreign State.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) As soon as practicable, after the Court recognises the foreign proceeding under subparagraph (1), the foreign representative shall notify the debtor, in the prescribed form, that the application has been recognised.

(5) Paragraphs 12, 13, 14 and 16 do not prevent modification or termination of recognition if it is shown that the grounds for granting the recognition were fully or partially lacking or have ceased to exist.

15—Subsequent information

A foreign representative shall, after the filing of an application for recognition of the foreign proceeding inform the Court promptly of—

(a) any substantial change in the status of the recognised foreign proceeding, or the status of the appointment of the foreign representative; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

16—Relief that may be granted upon application for recognition of a foreign proceeding

(1) Subject to the Rules of Court, where relief is urgently needed to protect the assets of the debtor or the interests of a creditor, a foreign representative may apply to the Court to grant relief of a provisional nature, including

(a) staying execution against the assets of the debtor; and

(b) entrusting the administration or realisation of all or part of the assets of the debtor located in Ghana to the foreign representative or any other person designated by the Court, in order to protect and preserve the value of assets that are perishable, susceptible to devaluation or otherwise in jeopardy.

(2) As soon as practicable after the Court grants relief under subparagraph (1), the foreign representative shall notify the debtor, in the prescribed form, of the relief that has been granted.

(3) The Court may refuse to grant relief under this paragraph if that relief would interfere with the administration of a foreign main proceeding.

17—Effects of recognition of a foreign main proceeding

(1) Subject to the Rules of Court, upon recognition by the Court of a foreign proceeding that is a foreign main proceeding

(a) commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations or liabilities of the debtor is stayed;

(b) execution against the assets of the debtor is stayed; and

(c) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended.

(2) Subparagraph (1) does not prevent the Court, on the application of any creditor or interested person, from making an order, subject to such conditions as the Court thinks fit, that the stay or suspension does not apply in respect of any particular action or proceeding, execution, or disposal of assets.

(3) Subsubparagraph (a) of subparagraph (1) does not affect the right of a creditor to commence an individual action or proceeding to the extent necessary to preserve a claim against the debtor.

(4) Subparagraph (1) does not affect the right of a creditor to request the commencement of a Ghana insolvency proceeding or the right to file claims in such a proceeding.

18—Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition by the Court of a foreign proceeding, the Court may, where it is necessary to protect the assets of the debtor or the interests of the creditors at the request of the foreign representative, grant an appropriate relief.

(2) Upon recognition by the Court of a foreign proceeding, the Court may, at the request of the foreign representative concerned, entrust the distribution of the whole or part of the

assets of the debtor that are located in Ghana to the foreign representative or another person designated by the Court, if the Court is satisfied that the interests of creditors in Ghana are adequately protected.

(3) In granting relief under this paragraph to a representative of a foreign non-main proceeding, the Court shall satisfy itself that the relief relates to assets that, under the laws of Ghana, should be administered in the foreign non-main proceeding or concern information required in that proceeding.

19—Protection of creditors and other interested persons

(1) Subject to the Rules of Court in granting or denying relief under paragraph 16 or 18 or in modifying or terminating relief under subparagraph (3), the Court shall ensure that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject the relief granted under paragraph 16 or 18 to conditions the Court considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by the relief granted under paragraph 16 or 18, or on the motion, modify of the Court, modify or terminate such relief.

(4) The Court shall, on application of the statutory receiver, terminate the relief granted under paragraph 16 or 18 if—

(a) an application for recognition has been made in respect of a debtor that is a bank or financial institution licensed under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);

(b) the Court has granted that application or the Court has granted relief under paragraph 16; and

(c) the debtor is placed in statutory receivership in accordance with the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) after that application or relief has been granted.

20—Actions to avoid acts detrimental to creditors

(1) Subject to the Rules of Court, upon recognition by the Court of a foreign proceeding, the foreign representative concerned may initiate an action that an insolvency practitioner may take in respect of a Ghana insolvency proceeding that relates to a transaction, including any gift, improvement of property, security, or charge that is voidable or that may be set aside or altered.

(2) Where the foreign proceeding is a foreign non-main proceeding, the Court shall ensure that the action relates to assets that, under the laws of Ghana, ought to be administered in the foreign non-main proceeding.

(3) Nothing in subparagraph (1) affects the doctrine of relation back as the doctrine is applied in Ghana.

21—Intervention by a foreign representative in Ghana insolvency proceeding

Upon recognition by the High Court of a foreign proceeding, the foreign representative may, if the requirements of the laws of Ghana are met, intervene in any proceeding in which the debtor is a party.

Co-operation with Foreign Courts and Foreign Representatives

22—Co-operation and direct communication between the Court and foreign courts or foreign representatives

(1) In respect of matters referred to in section 150, a court shall co-operate to the maximum extent possible with the foreign court or foreign representatives concerned, either directly or through an insolvency practitioner.

(2) The Court is entitled to communicate directly with or to request information or assistance directly from foreign courts or foreign representatives.

23—Co-operation and direct communication between the insolvency practitioner and foreign courts or foreign representatives

(1) In matters referred to in section 151, an insolvency practitioner shall, in the exercise of functions and subject to the supervision of the Court, co-operate with foreign courts or foreign representatives.

(2) The insolvency practitioner is entitled, in the exercise of functions and subject to the supervision of the Court to communicate directly with foreign courts or foreign representatives.

24—Forms of co-operation

For the purposes of co-operation, paragraphs 22 and 23 may be implemented by any appropriate means including—

(a) the appointment of a person or body to act at the direction of the Court;

(b) the communication of information by any means considered appropriate by the Court;

(c) the co-ordination of the administration and supervision of the assets and affairs of the debtor;

(d) the approval or implementation by Courts of agreements concerning the co-ordination of proceedings; and

(e) the co-ordination of concurrent proceedings regarding the same debtor.

Concurrent Proceedings

25—Commencement of an insolvency proceeding in Ghana after recognition of a foreign main proceeding

(1) After recognition by the Court of a foreign main proceeding, a Ghana insolvency proceeding may be commenced only if the debtor has assets in Ghana.

(2) The Ghana insolvency proceeding shall be restricted to the assets of the debtor that are located in Ghana and, to the extent necessary to implement co-operation and co-ordination for purposes of paragraphs 22, 23 and 24, to other assets of the debtor that, under the laws of Ghana, should be administered in that proceeding.

26—Co-ordination of a Ghana insolvency proceeding and a foreign proceeding

Where a foreign proceeding and a Ghana insolvency proceeding are taking place concurrently regarding the same debtor, the Court shall seek co-operation and co-ordination under paragraphs 22, 23 and 24 and the following shall apply:

(a) when the Ghana insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed

(i) any relief granted under paragraph 16 or 18 shall be consistent with the Ghana insolvency proceeding; and

(ii) if the foreign proceeding is recognised in Ghana as a foreign main proceeding, paragraph 17 does not apply;

(b) when the Ghana insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceeding—

(i) any relief in effect under paragraph 16 or 18 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the Ghana insolvency proceeding; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in subparagraph (1) of paragraph 17 shall be modified or terminated pursuant to subparagraph (2) of paragraph 17 if inconsistent with the Ghana insolvency proceeding; and

(c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court shall ensure that the relief relates to assets that, under the laws of Ghana, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

27—Co-ordination of more than one foreign proceeding

For purposes of section 150 in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek co-operation and co-ordination under paragraphs 22, 23 and 24 and the following requirements shall apply:

(a) any relief granted, under paragraph 16 or 18 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding shall 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, the Court shall review any relief

under paragraph 16 or 18 and shall modify or terminate it if it is inconsistent with the foreign main proceeding; and

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify or terminate the relief for the purpose of facilitating co-ordination of the proceedings.

28—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 Ghana insolvency proceeding, proof that the debtor is insolvent.

29—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 a claim in a proceeding pursuant to a law relating to insolvency in a foreign State shall not receive payment for the same claim in a Ghana insolvency proceeding regarding the same debtor, if the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

30—Interpretation

(1) In this Schedule, unless the context otherwise requires,

"court" means a court of competent jurisdiction;

"establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human resource and goods or services;

"foreign court" means a judicial or other competent authority that controls or supervises a foreign proceeding;

"foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of the main interests of the debtor;

"foreign non-main proceeding" means a proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment;

"foreign proceeding" includes a collective judicial or administrative proceeding in a foreign State, an interim proceeding pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to the control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

"foreign representation" means a person or body appointed, including one appointed to administer the reorganisation or the liquidation of the assets or affairs of the debtor, to act as a representative of a foreign proceeding;

"Ghana insolvency proceeding" means a collective judicial or administrative proceeding pursuant to the law in Ghana relating to the bankruptcy, liquidation, receivership, judicial management, statutory management, or voluntary administration of a debtor, or the

reorganisation of the affairs of a debtor, under which the assets and affairs of the debtor are administered, or the assets of the debtor are or will be realised for the benefit of secured or unsecured creditors;

"insolvency proceeding" means a collective judicial or administrative proceeding and an interim proceeding in accordance with a law relating to insolvency in which the assets and affairs of a debtor are subject to the control or supervision by a judicial or other competent authority with the mandate to control or supervise that proceeding for the purpose of re-organisation or liquidation; and

"insolvency practitioner" has the meaning assigned to in section 154.

(2) In interpreting this Schedule, regard shall be had[sic] to—

(a) the international origin and the need to promote uniformity in the application of the schedule;

(b) the need to promote good faith; and

(c) compliance with the Rules of Court.

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