INSOLVENCY ACT

Act 3 of 2009 – 1 June 2009
(*unless otherwise indicated*)

ARRANGEMENT OF SECTIONS

SECTION

SECTION

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Insolvency Act.

2. Interpretation

(1) In this Act—

"adjudication" has the meaning assigned to it by section 4;

"administrator" means an administrator appointed under Sub-part IV of Part III;

"assetless company" means a company in liquidation that has insufficient assets to meet the likely costs of any liquidator and has no reasonable prospect of paying any dividend to creditors;

"auditor" means an auditor licensed under the Financial Reporting Act;

"bank" means a bank licensed under the Banking Act;

"bankrupt" means an individual who has been adjudicated bankrupt;

"bankruptcy notice" means a notice referred to in section 6;

"bankruptcy order" means a bankruptcy order made against a debtor;

"charge"—

(a) means a right or interest in relation to property owned by a debtor, by virtue of which a creditor of the debtor is entitled to claim payment in priority to other creditors; and

(b) includes—

(i) a mortgage or *hypotheque conventionelle*;

(ii) a fixed or floating charge made under articles 2202 to 2202-55 of the Code Civil Mauricien;

(iii) a *gage*;

(iv) a deposit of a share or debenture certificate made under articles 2129-1 to 2129-6 of the Code Civil Mauricien;

(v) a pledge of shares or debentures;

(vi) a charge on a ship or aircraft;

(vii) a *nantissement*; and

(viii) any attachment on the proceeds to be paid by the Sugar Syndicate; but

(c) does not include—

(i) a hire purchase agreement; or

(ii) a charge under a charging order issued by a Court in favour of a judgment creditor;

"chargeholder" means the holder of a charge;

"commencement of winding up" has the meaning assigned to it by section 101;

"Companies Liquidation Account" means the account referred to in section 164;

"Companies Supervisory Committee" means the Companies Supervisory Committee established under section 295;

"company" has the same meaning as in the Companies Act;

"Companies Act" means the Companies Act;

"composition" has the meaning assigned to it by section 69;

"Court" means the Bankruptcy Division of the Supreme Court;

"creditor" includes a person entitled to enforce a final judgment or a final order;

"date of adjudication" has the meaning assigned to it by section 21;

"depart from Mauritius" includes—

(a) attempt or prepare to depart; and

(b) fail to return;

"designated country", for the purposes of section 99, means a country which, in its own law, contains a provision similar to section 99, and which is designated as such by the Minister by public notice;

"director", in relation to a company, has the same meaning as in the Companies Act;

"Director" means the Director of the Insolvency Service appointed under section 370;

"document"—

(a) means a document in any form; and

(b) includes—

(i) any writing on any material;

(ii) a book, graph or drawing;

(iii) information recorded or stored by any electronic or other technological means and capable, with or without the aid of equipment, of being reproduced;

"entitled person", in relation to section 169 (2), means any person on whom the constitution of the company confers the rights and powers of a shareholder;

"final order" includes an arbitration award by which any Court has authorised the enforcement of the award;

"Financial Services Commission" means the Financial Services Commission set up under the Financial Services Act;

"*gage*" means—

(a) a *gage* under article 2073 of the Code Civil Mauricien;

(b) a *gage sans déplacement* on vehicles under article 2108 of the Code Civil Mauricien;

(c) a *gage sans déplacement* on equipment under article 2125 of the Code Civil Mauricien;

(d) a *gage spécial au profit des banques* under article 2129-6 of the Code Civil Mauricien;

(e) a bank's special privilege under article 2150-3 of the Code Civil Mauricien;

(f) a right of set-off provided for by section 309; and

(g) a debt secured by *gage* under article 2150-3 of the Code Civil Mauricien;

"goods" means movable property of every kind;

"Insolvency Practitioner" means a person who is appointed under this Act to be and holds office as a liquidator (other than the Official Receiver), receiver, manager or administrator;

"Insolvency Service" means the Insolvency Service set up under section 369;

"Insolvency Surplus Account" means an account referred to in section 336;

"liquidation", in relation to a company, means the winding up of the company;

"liquidator" means a person appointed as such under Part III;

"Minister" means the Minister to whom responsibility for the subject of finance is assigned;

"notice" or "notification in writing" includes notice given by facsimile or by electronic mail or by telex or other electronic means where evidence is provided that the notice has been sent;

"officer", in relation to a company, means a director or any other person involved in the management of the company;

"Official Receiver" means the Official Receiver appointed pursuant to section 371;

"ordinary resolution" means a resolution of creditors passed in accordance with paragraph 5 (1) of the First Schedule;

"partnership" means civil or commercial partnership, a *société* not registered under an enactment or a *société de fait*;

"private pension scheme" has the same meaning as in the Private Pension Schemes Act;

"prohibition order" means an order made under section 176, 210 or 286;

"property" means property of every kind, whether tangible or intangible, movable or immovable, corporeal or incorporeal, and includes rights, interest and claims of every kind in relation to property however they arise;

"proposal" has the meaning assigned to it by section 78;

"provable debt" has the meaning assigned to it by section 305;

"provisional trustee" means a person appointed as such under section 80;

"public notice" means a notice that is given by publishing the notice—

(a) in the *Gazette*; and

(b) in 2 daily newspapers in wide circulation in Mauritius;

"qualified auditor" has the same meaning as in the Companies Act;

"receiver"—

(a) means a person appointed to take possession of property in receivership and deal with it as directed by the Court or the instrument of appointment; and

(b) includes a person appointed as receiver and manager;

"Registrar" means the Registrar of the Court;

"Registrar-General"—

(a) means the Registrar-General appointed under the Registrar-General Act; and

(b) includes the authorised officer under the Registration and Transcription of Deeds and Inscription of Mortgages, Privileges and Charges (Rodrigues) Act;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act;

"related company" has the same meaning as in the Companies Act;

"relative", in relation to a person, means—

(a) his parent, spouse, child, brother or sister;

(b) the parent, child, brother or sister of his spouse; or

(c) a nominee or trustee of a relative;

"remuneration" has the same meaning as in the Employment Rights Act;

"secured creditor"—

(a) means a person entitled to a charge on or over property owned by a debtor; and

(b) includes the holder of a *gage*;

"special manager" means a person appointed under section 128;

"special resolution" means a resolution of creditors passed in accordance with paragraph 5 (2) of the First Schedule;

"spouse", in relation to a person, includes a person with whom that person has a relationship in the nature of marriage;

"statutory demand" has the meaning assigned to it by section 180;

"summary instalment order" has the meaning assigned to it by section 87;

"supervisor" means a person appointed as such under section 89;

"surplus assets" means the assets of a company remaining after the payment of creditors' claims and available for distribution before the removal of its name from the register of companies;

"trustee" means a person appointed under section 79;

"unregistered corporation" means a partnership or association existing in Mauritius or elsewhere, or a company incorporated outside Mauritius;

"watershed meeting" means the creditors' meeting called by the administrator to decide the future of a company and, in particular, whether the company and the creditors should execute a deed of company arrangement.

(2) In this Act, a reference to a person by whom or in whose interest a receiver is appointed includes a reference to an assignee of the rights and interests under an agreement by or under which a receiver is appointed.

(3) Where there is time before which, or a period during which, an act for any purpose may or is required to be done, and this Act prevents the act from being done in time, then the time or period in question is extended by the period during which this Act prevents the act from being done in time.

[S. 2 amended by s. 28 (a) of Act 9 of 2015 w.e.f. 14 May 2015.]

3. Application of Act

This Act shall bind the State.

PART II – BANKRUPTCY AND ALTERNATIVES

Sub-Part I – Bankruptcy Process

Section A – Adjudication

4. Adjudication

(1) A debtor is adjudicated bankrupt where—

(a) a creditor of the debtor petitions the Court for a bankruptcy order; or

(b) the debtor petitions the Court for a bankruptcy order,

and the Court makes the bankruptcy order.

(2) (a) The Court shall not make a bankruptcy order on a creditor's petition unless one of the following grounds of adjudication is established to the satisfaction of the Court—

(i) failure to comply with a bankruptcy notice;

(ii) departure from Mauritius with intent to defeat or delay a creditor;

(iii) notification in writing by the debtor to a creditor that he has suspended, or proposes to suspend, payment of his debts; or

(iv) admission to creditors that the debtor is insolvent.

(b) There shall be an admission for the purposes of paragraph (a) (iv) where the debtor admits at a meeting of creditors that he is insolvent and—

(i) a majority in number and value of the creditors present at the meeting require the debtor to file an application for adjudication; or

(ii) the debtor agrees to file an application for adjudication and does not do so within 2 working days after the meeting.

(3) The Court shall not make a bankruptcy order on the petition of a secured creditor unless the creditor has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least 50,000 rupees.

(4) A petition under this section may not be withdrawn except with leave of the Court on such terms as it may determine.

5. Creditor's petition

(1) A person referred to in subsection (2) may petition the Court for a bankruptcy order where—

(a) the debtor owes the creditor 50,000 rupees or more or, where 2 or more creditors join in the application, the debtor owes a total of 50,000 rupees or more to those creditors between them;

(b) one of the grounds for adjudication referred to in section 4 is established to the satisfaction of the Court;

(c) the debt is a specific sum (*une somme certaine*); and

(d) the debt is payable either immediately or at some certain future time.

(2) (a) Subject to paragraph (b), a petition for a bankruptcy order may be made by—

(i) a creditor;

(ii) creditors jointly where there are 2 or more creditors; or

(iii) the trustee, provisional trustee or supervisor of a debtor.

(b) A secured creditor may petition the Court for a bankruptcy order where—

(i) the petition contains a statement that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors; or

(ii) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(3) A debtor against whom a bankruptcy order may be made shall—

(a) be domiciled in Mauritius; and

(b) (i) be present in Mauritius on the day on which a petition for a bankruptcy order is presented; or

(ii) have, at any time in the period of 3 years ending with that day—

(A) been ordinarily resident, or had a place of residence, in Mauritius; or

(B) carried on business in Mauritius.

(4) For the purposes of subsection (3) (b) (ii) (B), "carrying on business" includes—

(a) the carrying on of business by a partnership of which the debtor is a member; and

(b) the carrying on of business by an agent or manager for the debtor or for such partnership.

(5) An application by a creditor for a bankruptcy order shall—

(a) be verified by affidavit of the creditor or some other person having knowledge of the facts;

(b) be served on the debtor in the prescribed manner; and

(c) call on the debtor to show cause at the hearing of the application as to why the debtor should not be made bankrupt.

6. Bankruptcy notice

(1) A bankruptcy notice shall—

(a) require the debtor, in relation to the judgment debt or the sum ordered to be paid under a final order or the amount otherwise claimed to be owing—

(i) to pay the amount owing, including any interest to the date of payment of a debt that carries interest, plus costs;

(ii) to give security for the amount owing that satisfies the creditor or the Court; or

(iii) to compromise the amount owing on terms that satisfy the Court or the creditor;

(b) state what are the consequences if the debtor does not comply with the bankruptcy notice; and

(c) be served on the debtor in Mauritius or, with the Court's permission, outside Mauritius.

(2) The bankruptcy notice may name an agent to act on behalf of the creditor insofar as the notice requires—

(a) any payment to be made to the creditor; or

(b) any other step to be taken that involves the creditor.

7. Overstatement in bankruptcy notice

(1) Overstatement in a bankruptcy notice of the amount actually owing by the debtor shall not invalidate the notice, unless—

(a) the debtor notifies the creditor in writing that he disputes the validity of the notice because it overstates the amount actually owing; and

(b) the debtor makes that notification within the time specified in the notice for the debtor to comply with the notice.

(2) A debtor complies with a notice that overstates the amount actually owing by—

(a) taking steps that would have been in compliance with the notice had it stated the correct amount owing such as by paying the creditor the correct amount owing plus costs; and

(b) taking those steps within the time specified in the notice for the debtor to comply.

8. Failure to comply with bankruptcy notice

(1) There shall be a failure to comply with a bankruptcy notice where the requirements of subsection (2) or (3) are satisfied.

(2) The requirements of this subsection are that—

(a) a creditor has obtained a final judgment or a final order against the debtor for any amount;

(b) execution of the judgment or order has not been stayed by a Court;

(c) the debtor has, within 42 days before the date of the petition for a bankruptcy order, been served with a bankruptcy notice; and

(d) the debtor has not, within the time limit specified in subsection (4),—

(i) complied with the requirements of the notice; or

(ii) satisfied the Court that he has a cross-claim against the creditor.

(3) The requirements of this subsection are that—

(a) the debtor is indebted to the creditor in relation to a provable debt;

(b) the debtor has, within 42 days before the date of the petition for a bankruptcy order, been served with a bankruptcy notice;

(c) the debtor has not, within the time limit specified in subsection (4)—

(i) complied with the requirements of the notice; or

(ii) satisfied the Court that the debtor has a cross-claim against the creditor; and

(d) the bankruptcy notice informs the debtor that if the debtor disputes the debt or claims that any indebtedness on the part of the debtor to the creditor is less than 50,000 rupees, the debtor may appear before the Court in opposition to any petition filed by the creditor to have the debtor adjudicated bankrupt and provide a cause that—

(i) he does not owe a debt to the creditor; or

(ii) that he does owe a debt to the creditor, but the debt is less than 50,000 rupees.

(4) The time limit referred to in subsection (2) (d) and subsection (3) (c) is—

(a) where the debtor is served with the bankruptcy notice in Mauritius, 14 days after service; or

(b) where the debtor is served with the bankruptcy notice outside Mauritius, the time specified in the order of the Court permitting service outside Mauritius.

(5) In this section,—

(a) a creditor who has obtained a final judgment or a final order includes a person who is for the time being entitled to enforce a final judgment or final order;

(b) where a Court has given permission for enforcing an arbitration award that the debtor pay money to the creditor—

(i) "final order" includes the arbitration award; and

(ii) "proceedings" includes the arbitration proceedings in which the award was made;

(c) a "cross-claim" means a counterclaim, set-off or cross-demand that—

(i) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and

(ii) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

9. Adjournment of petition or refusal to adjudicate

(1) The Court may, at its discretion, stay or adjourn the hearing of a petition conditionally or unconditionally—

(a) for obtaining further evidence;

(b) to direct the Director to prepare a report under section 17 on whether the debtor should make a proposal or be placed under a summary instalment order; or

(c) for any other just cause.

(2) The Court may, at its discretion, refuse to adjudicate the debtor bankrupt where—

(a) the creditor has not established the requirements set out in section 4 or 5;

(b) the creditor has not established that the debtor has been served with the bankruptcy notice;

(c) the debtor satisfies the Court that he is able and willing to pay his debts; or

(d) it is just and equitable or there is other sufficient cause that the Court does not make a bankruptcy order.

10. Judgment under appeal

Where the creditor's petition for a bankruptcy order relies on the ground that the debtor failed to comply with a bankruptcy notice, and the debtor has appealed against the judgment or order underlying the bankruptcy notice or the judgment for non-payment of trust money, as the case may be, and the appeal is still to be determined, the Court may—

(a) stay the creditor's petition for a bankruptcy order; or

(b) refuse the petition.

11. Underlying debt not determined

(1) This section applies where the debtor appears in opposition to a creditor's petition and avers that—

(a) he does not owe a debt to the creditor; or

(b) he owes a debt to the creditor, which is less than 50,000 rupees.

(2) The Court may, instead of refusing the petition, stay the petition so that the question of whether the debt is owed, or how much of the debt is owed, can be resolved at a trial.

(3) Where the petition is based on the grounds set out in section 8 (3), the Court shall have jurisdiction for the trial of any question in relation to the existence or amount of the debt.

(4) Where the petition is made on any ground other than the grounds set out in section 8 (3), the trial in relation to a debt of less than 500,000 rupees shall, unless the Court orders otherwise, be held in the Intermediate Court.

(5) As a condition of staying the petition, the Court may require the debtor to give security to the creditor for any debt that may be established as owing by the debtor to the creditor, and for the costs of establishing the debt.

12. Court's power where more than one petition or more than one debtor

(1) Where there is more than one petition for a bankruptcy order, and one petition has been stayed or adjourned by the Court, the Court may, if there is a good reason, make a bankruptcy order on the application that has not been stayed or adjourned.

(2) Where the Court makes a bankruptcy order under subsection (1), the Court shall dismiss the petition that has been stayed or adjourned on terms that the Court thinks appropriate.

(3) Where a creditor's petition for a bankruptcy order relates to more than one debtor, the Court may refuse to make an order in relation to one or more of the debtors without affecting the petition in relation to the remaining debtor or debtors.

13. Order on disposition of property or proposal or summary instalment order

(1) This section applies where the debtor—

(a) has made a disposition of all, or substantially all, of his property to a trustee for the benefit of his creditors;

(b) has made a proposal; or

(c) has applied for a summary instalment order.

(2) The debtor or the trustee for the debtor's creditors or any creditor may apply to the Court for an order under this section.

(3) On the hearing of the application, the Court may—

(a) order that the disposition or proposal or summary instalment order is not a ground for making a bankruptcy order;

(b) stay or refuse the petition for a bankruptcy order;

(c) order that any other petition for a bankruptcy order shall not be filed;

(d) make any order as to costs that the Court thinks appropriate; or

(e) where it orders that costs shall be paid to the creditor who has petitioned for the bankruptcy order, order that the costs shall be paid out of the debtor's estate.

14. Substitution of creditor

(1) The Court may substitute another creditor for the creditor making the petition for a bankruptcy order, where—

(a) the creditor making the petition has not proceeded with due diligence or at the hearing of the application offers no evidence; and

(b) the debtor owes the other creditor 50,000 rupees or more.

(2) The other creditor shall, in that case, file another petition for a bankruptcy order, but may rely on the grounds of adjudication to which the first petition related.

15. Debtor's petition

(1) Subject to subsection (2), a debtor may file a petition with the Court to have himself adjudicated bankrupt on the ground that he is unable to pay his debts where he has combined debts of 50,000 rupees or more.

(2) The Court shall not receive for filing a petition by a debtor for a bankruptcy order unless he also files with the Court a statement of his affairs in the prescribed form which is not, in the Court's opinion, incorrect or incomplete.

(3) A debtor's petition shall not after presentation be withdrawn without leave of the Court.

16. Order on debtor's petition

(1) Where the grounds set out in section 15 (1) are established to the satisfaction of the Court and the requirements of section 15 (2) are complied with, the Court shall make a bankruptcy order against the debtor unless the Court is of the opinion that it would be appropriate in the circumstances to direct the Director to prepare a report under section 17 on whether the debtor should make a proposal or be placed under a summary instalment order, in which case the Court shall adjourn the application.

(2) A bankruptcy order on a debtor's petition shall have the same consequences as a bankruptcy order made on a creditor's petition.

17. Report of Insolvency Service

(1) Where the Court under section 9 (1) (b) or 16 (1) directs the Director to prepare a report, the Director shall within 14 days submit to the Court a report on whether the debtor is willing to enter into a proposal or a summary instalment order.

(2) A report which states that the debtor is willing to enter into a proposal shall state—

(a) whether, in the opinion of the Director, a meeting of the debtor's creditors should be summoned to consider the proposal; and

(b) where, in the Director's opinion, such a meeting should be summoned, the date on which, and time and place at which, he suggests that the meeting should be held.

(3) On considering a report under this section, the Court may—

(a) without any application, make an order for the appointment of the Official Receiver as Interim Receiver under section 20 where it feels that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal; or

(b) where it feels it would be inappropriate to make such an order, make a bankruptcy order.

(4) An order made under subsection (3) (a) ceases to have effect at the end of such period as the Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors.

(5) Where it has been reported to the Court under this section that a meeting of the debtor's creditors should be summoned, the Director shall, unless the Court otherwise directs, summon the meeting for the time, date and place suggested in his report.

18. Debtors' joint petition

(1) Two or more debtors, who are carrying on a business as partners, may file a joint petition.

(2) The debtors are automatically adjudicated bankrupt separately and jointly when the petition is filed.

19. Summary administration

(1) Where, on the hearing of a debtor's petition, the Court makes a bankruptcy order and the conditions laid down under subsection (2) are satisfied, the Court shall, if it appears to be appropriate to do so, issue a certificate for the summary administration of the bankrupt's estate.

(2) The circumstances in which a certificate for summary administration may be issued are that—

(a) the aggregate amount of the bankruptcy debts so far unsecured would be less than 500,000 rupees (called "the minimum amount"); and

(b) within the period of 5 years ending with the filing of the petition, the debtor has neither been adjudicated bankrupt nor made a composition with his creditors in satisfaction of his debts or a proposal.

(3) The Court may revoke a certificate issued under this section where it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.

(4) Where a certificate for summary administration is issued—

(a) the Official Receiver may dispense with the first meeting of creditors provided for in section 26;

(b) no fee shall be allowed to any law practitioner except on the certificate of the Court that the presence of counsel or attorney was necessary; and

(c) the period after which the bankrupt is automatically discharged shall be 2 years.

Section B – Interim Receiver

20. Appointment of Official Receiver as Interim Receiver

(1) Where a creditor's petition for a bankruptcy order has been filed, a creditor of the debtor may apply to the Court for an order appointing the Official Receiver as Interim Receiver of all or part of the debtor's property.

(2) The Court may make an order under subsection (1) at any time before it makes a bankruptcy order.

(3) 'As part of the order or, on the application of a creditor or the Official Receiver, subsequently, the Court may authorise the Official Receiver to—

(a) take possession of any property;

(b) sell any perishable property or property that is likely to fall rapidly in value;

(c) control the debtor's business or property as directed by the Court; or

(d) exercise, in relation to the debtor, any of the powers vested in him by section 54 in relation to a bankrupt;

(4) An order for the Official Receiver's control of the debtor's business must be confined to what is necessary, in the Court's opinion, for conserving the debtor's property.

(5) (a) The appointment of the Official Receiver as Interim Receiver of the debtor's property shall be advertised by him in such manner as may be prescribed.

(b) A creditor of the debtor shall not issue any execution process against the property of the debtor after the appointment of the Official Receiver as Interim Receiver has been advertised.

(c) A creditor shall not continue an execution process already issued before the advertisement.

(d) A creditor or any other person interested may apply to the Court for an order allowing the issue or continuation of an execution process, and the Court may make an order on terms that it thinks appropriate.

(e) Where execution process is stayed under this section, sections 57 and 58 shall apply as if a bankruptcy order had been made against the debtor.

Section C – Effect of adjudication

21. Date of adjudication and disqualification of bankrupt

(1) The date of an adjudication, and the commencement of a bankruptcy, shall be the date and time when the Court made the bankruptcy order.

(2) The Court shall record on the bankruptcy order the date and time when the order was made.

(3) The Court shall notify the Official Receiver as soon as possible after an order of adjudication is made.

(4) It shall be presumed that an act was done, or a transaction entered into or effected, after the date of an adjudication, but the presumption shall not apply if the contrary is proved.

(5) Unless an adjudication is the subject of an appeal—

(a) no one may later assert that the adjudication was not valid or that a prerequisite for adjudication was absent; and

(b) the adjudication shall be binding on every person.

(6) Where a debtor is adjudged bankrupt, he shall, subject to this Act, be disqualified from being elected to any public office.

(7) Such disqualification shall be removed and shall cease when the adjudication in bankruptcy is annulled, or when the debtor obtains his discharge with a certificate from the Court to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

(8) The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

22. Procedure following adjudication

(1) On adjudication—

(a) the Official Receiver shall advertise the adjudication under subsections (2) and (3);

(b) the bankrupt shall file with the Official Receiver a statement of his affairs under section 25 (1), if the bankrupt has not already done so;

(c) the Official Receiver may call a meeting of the bankrupt's creditors under section 26;

(d) proceedings to recover certain debts are stayed under section 23;

(e) execution process may not be commenced or continued after the adjudication is advertised under section 24; and

(f) the property of the bankrupt vests in the Official Receiver under section 30.

(2) Subject to subsection (3), the Official Receiver shall advertise the adjudication of a bankrupt in the prescribed manner as soon as practicable after it has occurred.

(3) The Court may order that the Official Receiver shall not advertise the adjudication if the bankrupt has appealed against the bankruptcy order.

23. Stay of proceedings

(1) Subject to subsection (2), on adjudication, all proceedings to recover any debt provable in the bankruptcy shall be stayed.

(2) On the application of any creditor or other person interested in the bankruptcy, the Court may allow proceedings that had already begun before the date of adjudication to continue on terms that the Court thinks appropriate.

24. Execution process after adjudication

(1) A creditor shall not begin or continue an execution, attachment or other process and shall not have any remedy against the bankrupt's property or person, for the recovery of a debt provable in the bankruptcy, after the Official Receiver has—

(a) advertised the bankruptcy order; or

(b) given notice of the making of the bankruptcy order to the creditor.

(2) After advertisement of the adjudication or notice by the Official Receiver to the creditor, a creditor shall not seize or sell any property by way of distress for rent due by the bankrupt, but he may continue with the distress procedure if it has already begun.

25. Statement of affairs

(1) After adjudication, the bankrupt shall file with the Official Receiver a statement in the prescribed form of his affairs, unless he has already filed a statement under section 15.

(2) Where no statement or, in the Official Receiver's view, no sufficient statement of affairs has been filed under section 15, the Official Receiver shall, as soon as practicable after adjudication, send to the bankrupt a notice stating—

(a) that the bankrupt shall file a statement in the prescribed form of the bankrupt's affairs; and

(b) the time when the statement shall be filed.

(3) The Official Receiver shall send the notice to the address of the bankrupt given in the application for a bankruptcy order or the bankrupt's last known address.

(4) The bankrupt shall file his statement of affairs with the Official Receiver within 14 days of the adjudication or, as the case may be, after receiving the Official Receiver's notice under subsection (2).

(5) At any time after filing a statement of affairs with the Official Receiver, the bankrupt may file additional or amended statements or answers.

26. Meeting of creditors

(1) Subject to section 19 (4) and this section, the Official Receiver shall, after adjudication, call the first meeting of the bankrupt's creditors.

(2) The Official Receiver shall call the meeting as soon as practicable after adjudication and, unless there are special circumstances, not less than 5 weeks after adjudication, by sending a notice of the time and place of the meeting by ordinary post to—

(a) the bankrupt, at the bankrupt's last known address;

(b) each creditor named in the bankrupt's statement of affairs, at the address given in the statement of affairs or at any other address that the Official Receiver believes is the creditor's address; and

(c) any other creditor known to the Official Receiver.

(3) The Official Receiver shall advertise the time and place of the meeting in such manner as may be prescribed.

(4) The First Schedule shall so far as applicable apply to the calling, holding and effect of this meeting.

(5) The Official Receiver need not call a first creditors' meeting where he—

(a) decides that the meeting should not be called; or

(b) sends each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Official Receiver, a notice that complies with subsection (7); and

(c) does not receive, within 10 working days after the Official Receiver's notice was sent, written notice from a creditor requiring the Official Receiver to call the meeting.

(6) In deciding whether the meeting should not be called, the Official Receiver shall consider—

(a) the bankrupt's assets and liabilities;

(b) the likely result of the bankruptcy; and

(c) any other relevant matter.

(7) The Official Receiver's notice to creditors under subsection (5) (b) shall—

(a) state that the Official Receiver considers that the first creditors' meeting should not be called;

(b) give the reasons for not calling the meeting; and

(c) state that the Official Receiver will not call the meeting unless a creditor gives the Official Receiver written notice, within 10 working days after the Official Receiver's notice was sent, requiring the Official Receiver to call the meeting.

(8) The Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

(9) The Official Receiver shall call a subsequent meeting if required to do so by one-quarter in number and value of the creditors who have proved their debts.

(10) The First Schedule, in so far as it is applicable, shall apply to the calling, holding and effect of subsequent meetings.

(11) A creditors' meeting and the resolutions passed at the meeting are valid even if some creditors did not receive the notice of the meeting, unless the Court orders otherwise.

27. Appointment of expert and inspection of documents

(1) A creditors' meeting may pass a resolution—

(a) appointing an expert to assist the Official Receiver in the administration of the bankrupt's estate; and

(b) providing for the expert's remuneration out of the bankrupt's estate.

(2) A creditors' meeting may pass a resolution appointing a committee to assist the Official Receiver in the administration of the bankrupt's estate, and the Court may approve any remuneration of the members of the committee out of the bankrupt's estate.

(3) A creditor, or an attorney or accountant acting for that creditor, who has lodged a proof of debt may at any reasonable time inspect and take extracts or copies of—

(a) the bankrupt's accounting records;

(b) the bankrupt's answers to questions;

(c) the bankrupt's statement of affairs;

(d) all proofs of debt; and

(e) the minutes of any creditors' meeting.

28. Bankrupt's death after adjudication

Where a bankrupt dies after adjudication, the bankruptcy continues in all respects as if the bankrupt were alive.

Sub-Part II – Bankrupt's Property

Section A – Status of property

29. Bankrupt's estate

(1) Subject to subsection (2), a bankrupt's estate for the purpose of this Sub-part shall comprise—

(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and

(b) any property which, pursuant to this Sub-part, forms part of that estate or is treated as forming part of that estate.

(2) Subsection (1) shall not apply to—

(a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation up to a maximum value assessed by the Official Receiver of 100,000 rupees or such other amount as may be prescribed or agreed to by resolution of the creditors;

(b) such clothing, bedding, furniture, household equipment and provisions as are necessary to satisfy the basic domestic needs of the bankrupt and his family, up to a maximum value assessed by the Official Receiver of 100,000 rupees or such other amount as may be prescribed or agreed by resolution of the creditors; and

(c) property held by the bankrupt on trust for any other person.

(3) (a) In this Sub-part, "property", in relation to a bankrupt, includes reference to any power exercisable by the bankrupt over or in respect of property in or outside Mauritius for the bankrupt's own benefit.

(b) For the purposes of this Sub-part, property which forms part of the bankrupt's estate does so subject to the rights of any person other than the bankrupt, and a secured creditor may take possession of and realise and otherwise deal with property over which he has a charge, disregarding any rights the secured creditor has given up under section 5 (2) (b) and any rights which have otherwise been given up in accordance with the Second Schedule or in such manner as may be prescribed.

(4) This section shall apply to any other enactment under which any property is to be excluded from a bankrupt's estate.

30. Vesting in Official Receiver

(1) On adjudication, all the bankrupt's estate shall vest in the Official Receiver.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the Official Receiver, it shall so vest without any conveyance, assignment or transfer.

(3) A power exercisable over or in respect of property shall be deemed, for the purposes of this Sub-part, to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person.

31. Property acquired after adjudication

Subject to section 32, between the commencement of the bankruptcy and the discharge of the bankrupt—

(a) all property in or outside Mauritius that the bankrupt acquires or that passes to the bankrupt shall vest in the Official Receiver; and

(b) the powers that the bankrupt could have exercised in, over, or in respect of, that property for the bankrupt's own benefit shall vest in the Official Receiver.

32. Transaction in good faith and for value

(1) A transaction between the bankrupt and any other person under which, after adjudication, the bankrupt acquires property, or property passes to the bankrupt shall be valid against the Official Receiver where—

(a) the other person deals with the bankrupt in good faith and for value; and

(b) the transaction is completed without an intervention by the Official Receiver.

(2) Where the other person is the bankrupt's bank, a transaction dealing with the bankrupt for value includes—

(a) the receipt by the bank of any money, security, or negotiable instrument from the bankrupt or by the bankrupt's order or direction;

(b) a payment by the bank to the bankrupt or by the bankrupt's order or direction; and

(c) the delivery by the bank of a security or negotiable instrument to the bankrupt or by the bankrupt's order or direction.

(3) A payment of money or delivery of property by a legal personal representative to, or direction of, the bankrupt is a transaction for value.

33. Rights under execution or attachment

(1) Where a creditor has issued execution against movable property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the Official Receiver, unless he has completed the execution or attachment before adjudication and before notice of the presentation of any application for a bankruptcy order by or against the debtor.

(2) For the purposes of this section, an execution against goods is completed by seizure and sale and an attachment of a debt is completed by receipt of the debt.

34. Duties of usher as to goods seized

(1) Where movables of a debtor are taken in execution and, before their sale, notice is served on the usher that a bankruptcy order has been made against the debtor, the usher shall, on request, deliver the goods to the Official Receiver, but the costs of execution shall be a charge on the goods delivered, and the Official Receiver may sell the goods or an adequate part thereof, for the purpose of satisfying the charge.

(2) (a) Where movables of a debtor are sold under an execution in respect of a judgment for a sum exceeding 20,000 rupees, the usher shall deduct the costs of the execution from the proceeds of the sale, and pay the balance to the cashier of the Court to which he is attached, and the cashier shall retain it for 14 days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, the cashier shall hold the proceeds on trust to pay to the Official Receiver.

(b) Where no such notice is served within such period, or where such notice having been served, the debtor is not adjudged bankrupt on such petition or on any other petition of which the cashier has notice, the cashier may deal with the proceeds as if no notice had been served on him.

(3) A person who purchases the goods in good faith under a sale by the usher shall in all cases acquire a good title against the Official Receiver.

35. *Bona fide* transaction without notice

Subject to Sub-part IV of Part IV, nothing in this Act shall, in the case of a bankruptcy, invalidate—

(a) any payment by the bankrupt to any of his creditors;

(b) any payment or delivery to the bankrupt;

(c) any conveyance or assignment by the bankrupt for valuable consideration; or

(d) any contract, dealing or transaction by or with the bankrupt for valuable consideration,

where—

(i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before adjudication; and

(ii) the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of the presentation of an application for a bankruptcy order before that time.

36. Immovable property

(1) Any interest of the bankrupt in any immovable property shall on adjudication vest in the Official Receiver without any conveyance, assignment or transfer.

(2) The sale of any immovable property or interest in immovable property which vests in the Official Receiver shall be effected in accordance with section 54 and the Sale of Immovable Property Act shall not apply to the sale.

37. Transfer of shares and other securities

(1) The Official Receiver may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it if the bankrupt had not been adjudicated bankrupt—

(a) securities in a company;

(b) securities of the Government;

(c) securities issued by a local authority;

(d) shares in ships; and

(e) any other property transferable in the records of a company, office or person.

(2) A person whose act or consent is necessary for the transfer of the property must, on the Official Receiver's request, do whatever is necessary for the transfer to be completed.

(3) In the case of the transfer by the Official Receiver of securities in a company, a shareholder to whom the securities must be offered for sale under the constitution of the company and who agrees to purchase must pay a reasonable price for the securities, whether or not the constitution provides a procedure for fixing the price.

(4) The Official Receiver may disclaim any liability under shares owned by the bankrupt in any company by disclaiming the shares in accordance with sections 311 and 312.

38. Goods on hire purchase

(1) Where—

(a) a bankrupt purchased goods under a hire purchase agreement before adjudication; and

(b) a creditor—

(i) took possession of the goods within 21 days before adjudication, and after adjudication still possesses them; or

(ii) takes possession of the goods after adjudication,

the creditor shall not sell or dispose of the goods or part with possession of them (except for storage or repair), until 28 days after the date of adjudication, unless the Official Receiver consents in writing to the creditor selling or disposing or parting with possession of the goods before the expiry of that period.

(2) The Official Receiver may, notwithstanding any provision of the hire purchase agreement—

(a) within a period of 28 days from the date of adjudication, introduce a buyer for the goods and the bankrupt's indebtedness to the creditor shall be reduced to the extent of the amount paid by the buyer to the creditor for the goods; or

(b) at any time before the creditor sells or agrees to sell the goods following the expiry of that period, settle the bankrupt's obligations as debtor and retain the goods as part of the bankrupt's estate.

(3) Where—

(a) a creditor has taken possession of goods purchased under a hire purchase agreement, whether before or after the adjudication of the debtor; and

(b) the Official Receiver has not taken any action under subsection (2),

the creditor may prove in the bankruptcy for the amount that the creditor was entitled to recover from the bankrupt as debtor.

(4) Where—

(a) a bankrupt purchased goods under a hire purchase agreement before adjudication; and

(b) at the time of adjudication the creditor—

(i) has not taken possession of the goods; or

(ii) has taken possession of them and has not sold or disposed of or parted with possession of them,

the creditor may assign the goods to the Official Receiver, and, if he does so, may prove in the bankruptcy for the net balance due to the creditor under the agreement.

39. Second bankruptcy

(1) Where a bankrupt is, before discharge, adjudicated bankrupt for a second time—

(a) subject to subsection (2), any property that is acquired by, or has passed to, the bankrupt since the first bankruptcy, including property acquired or that has passed since the second bankruptcy, shall vest in the Official Receiver in the second bankruptcy; and

(b) any surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and shall be paid to the Official Receiver in the first bankruptcy.

(2) The Court may, if it thinks appropriate, order that the following assets or their proceeds shall vest in the Official Receiver in the first bankruptcy—

(a) assets in the second bankruptcy that, in the Court's opinion, were acquired independently of the creditor in the second bankruptcy; and

(b) assets in the second bankruptcy that devolved upon the bankrupt.

(3) Where the Official Receiver receives notice that a creditor has filed an application for a second bankruptcy, he shall—

(a) hold property in his possession that has been acquired by, or passed to, the bankrupt since the first bankruptcy until the application for a second bankruptcy has been dealt with; and

(b) transfer the property and its proceeds, less any deduction for the Official Receiver's costs and expenses, to the Official Receiver in the second bankruptcy where the creditor's application results in a second bankruptcy, or if the bankrupt is automatically adjudicated bankrupt on his own application.

Section B – Duties of bankrupt

40. General duties of bankrupt

A bankrupt shall, to the utmost of his power, aid in the realisation of his property and the distribution of the proceeds amongst his creditors and shall—

(a) give a complete and accurate list of his property and of his creditors and debtors and such other information as to this property as the Official Receiver requires;

(b) attend before the Official Receiver whenever called upon to do so, and, if required to do so by the Official Receiver, verify any statement by affidavit;

(c) disclose to the Official Receiver as soon as practicable any property which may be acquired by him before his discharge and would be divisible amongst his creditors;

(d) supply to the Official Receiver such information as he may require regarding his expenditure and sources of income after adjudication;

(e) execute such power of attorney, transfer or instrument, in relation to his property and the distribution of the proceeds amongst his creditors, as are required by the Official Receiver, prescribed or directed by the Court;

(f) deliver on demand any of his property that is divisible amongst his creditors and is under his possession or control to the Official Receiver;

(g) deliver on demand to the Official Receiver any property that is acquired by him before his discharge; and

(h) immediately notify the Official Receiver in writing of any change of his address, his employment or his name.

41. Financial information

(1) A bankrupt shall give the Official Receiver the information and details that are necessary to prepare a statement of the financial position of the bankrupt's estate.

(2) Where required by the Official Receiver, the bankrupt shall, within a reasonable time of adjudication, prepare and deliver to the Official Receiver full, true and detailed accounts and statements of his financial position that show details of—

(a) the bankrupt's trading and stocktaking; and

(b) the bankrupt's profit and losses during any period in the 3 years before the adjudication.

(3) For the bankrupt to prepare the accounts and statements referred to in subsection (2)—

(a) the Official Receiver shall give the bankrupt full access to the bankrupt's books and papers in the Official Receiver's possession; and

(b) where the Official Receiver thinks necessary, the bankrupt shall be assisted by an accountant at the expense of the bankrupt's estate.

Section C – Control over bankrupt

42. Contribution to payment of debts

(1) Where required by the Official Receiver, a bankrupt shall pay an amount or periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts on such terms and conditions as the Official Receiver may direct.

(2) Before the Official Receiver requires a bankrupt to make a payment under subsection (1), he shall—

(a) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities and prospects; and

(b) make reasonable allowance for the maintenance of the bankrupt and his dependent relatives.

(3) The Court may, on the application of the bankrupt or any creditor—

(a) vary, suspend or cancel the bankrupt's obligations to make a payment under subsection (1); or

(b) remit any arrears owing by the bankrupt.

(4) Where the bankrupt defaults in making a payment required under subsection (1), the burden shall be on the bankrupt in any proceedings arising out of the default to show that the default was not wilful.

43. Bankrupt entering business

(1) An undischarged bankrupt shall not, without the consent of the Official Receiver or the Court, directly or indirectly—

(a) enter into, carry on, or take part in the management or control of any business;

(b) be employed by a relative of the bankrupt; or

(c) be employed by a company, trust, trustee, or any partnership or unincorporated association that is carrying on a business that is managed or controlled by a relative of the bankrupt.

(2) This section shall be in addition to, and not in derogation from, section 133 (2) of the Companies Act.

44. Search and seizure of property

(1) Notwithstanding any other enactment, the Court may issue a search warrant to the Official Receiver where there is reason to believe that any relevant property is concealed in any premises or place.

(2) The warrant may authorise the Official Receiver, as well as any person required to assist him, to—

(a) enter and search any premises or place;

(b) seize and take possession of any relevant property; and

(c) where necessary, use force to enter the locality, premises or place.

(3) Where he is authorised by a warrant issued by a competent Court, the Official Receiver, as well as any other person required to assist him, may—

(a) seize any of the bankrupt's property in the custody or possession of the bankrupt or of any other person;

(b) with a view to seizing the bankrupt's property—

(i) break open any building or room of the bankrupt where the bankrupt is believed to be;

(ii) break open any building or receptacle of the bankrupt where the bankrupt's property is believed to be; and

(iii) seize and take possession of the bankrupt's property found in the building, room or receptacle.

(4) Where the Official Receiver is satisfied that another person is entitled to any relevant property, he may retain possession of the property for a period of 28 days from the date on which he first receives notice that another person claims to be entitled to the property, or such further period as the Court may allow.

(5) The Official Receiver may copy or extract from any relevant property any information relating to the property, conduct or dealings of the bankrupt.

(6) In this section—

"relevant property" includes any document, computer, facsimile machine or other electronic equipment containing information relating to the bankrupt's property, conduct or dealings.

45. Vacation of property

Notwithstanding any other enactment, the Official Receiver may require a bankrupt and any of his or her relatives to vacate any land or building that is part of the property vested in the Official Receiver under the bankruptcy, and the bankrupt shall comply with the request.

46. Right to inspect document

A bankrupt may at any convenient time inspect, and take extracts or copies of—

(a) his accounting records;

(b) his answers to questions put to him by the Official Receiver;

(c) his statement of affairs;

(d) all proofs of debt;

(e) the minutes of any creditors' meeting; and

(f) the record of any examination of the bankrupt.

47. Recovery of property or release or discharge

Subject to sections 31 and 32, after adjudication, a bankrupt, and any person (other than the Official Receiver) who claims through or under the bankrupt, shall not be empowered to—

(a) recover any property that is part of the bankrupt's estate; or

(b) give a release or discharge in relation to that property.

48. Defeating beneficial interest

(1) After adjudication, a bankrupt shall not execute a power of appointment, or any other power vested in the bankrupt, where the result is to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be entitled at any time before his discharge.

(2) The restriction imposed on the bankrupt by subsection (1) shall, subject to sections 31 and 32, apply both before and after the bankrupt obtains a discharge.

49. Bank accounts

(1) Where a bank ascertains that a customer of the bank is an undischarged bankrupt, it shall—

(a) as soon as possible, notify the Official Receiver of any account that the bankrupt holds with the bank; and

(b) not pay any money out of the account, except as provided under subsection (2).

(2) The bank may pay money out of the account where—

(a) the bank is authorised by an order of the Court or instructed by the Official Receiver to do so; or

(b) the bank has notified the Official Receiver that the bank holds such an account and has not, within one month of notification, received any instructions from the Official Receiver.

50. Allowance to bankrupt

(1) Notwithstanding any other enactment, the Official Receiver may make an allowance out of the property of a bankrupt to the bankrupt or any relative of the bankrupt for the support of the bankrupt and his dependent relatives.

(2) The Official Receiver may allow a bankrupt to retain, for the immediate maintenance of the bankrupt and his dependent relatives, any money up to a maximum of 10,000 rupees or such sum as may be prescribed that the bankrupt has in his possession or in a bank account at the time of adjudication.

51. Examination of bankrupt and others

(1) The Official Receiver may at any time, before or after a bankrupt's discharge—

(a) summon any of the persons specified in subsection (2) to appear before him, or the Court to be examined on oath; and

(b) require that person to produce and surrender to the Official Receiver any document in that person's possession or control that relates to the bankrupt's property or dealings.

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

(a) the bankrupt;

(b) the bankrupt's spouse;

(c) a person known or suspected to possess any of the bankrupt's property or any document relating to the affairs or property of the bankrupt;

(d) a person believed to owe the bankrupt money;

(e) a person believed to be able to give information regarding—

(i) the bankrupt; or

(ii) the bankrupt's trade, dealings, property, income from any source, or expenditure; and

(f) a trustee of a trust of which the bankrupt is a settlor or of which the bankrupt is or has been a trustee.

(3) An examination must be recorded in writing, and the person examined must sign the written record if required to do so.

(4) Where a person summoned does not appear at the appointed time and has no reasonable excuse, the Court may—

(a) on the Official Receiver's application, by warrant, have him arrested and brought for examination before the Court; and

(b) where the Court thinks that his evidence was necessary for the purposes of the bankrupt's estate, order him to pay all the expenses arising out of his arrest and examination.

(5) A person who is summoned by the Official Receiver for examination shall be paid such expenses of attending the examination as may be prescribed.

(6) No person shall, without the Court's permission, publish a report of—

(a) any examination of a person summoned by the Official Receiver; or

(b) any matter arising in the course of that examination.

(7) On the Official Receiver's application, the Court may permit publication of a report under the conditions that the Court imposes.

(8) Subsections (1) to (7) also apply when the Official Receiver has been appointed a receiver and manager of all or part of a debtor's property under section 20, and references in those sections to the bankrupt must be read as if they were references to the debtor.

52. Public examination of bankrupt

(1) (a) The Court shall hold a public examination of a bankrupt where, at any time before an order for the bankrupt's discharge is made, there is filed with the Court a statement by the Official Receiver, or a copy of a creditors' ordinary resolution, requiring that the bankrupt should be publicly examined.

(b) The copy of the resolution must be certified by the Official Receiver or the chairperson of the meeting at which it was passed.

(2) Every public examination shall be conducted in accordance with the Third Schedule.

53. Documents and other records

(1) The Official Receiver may, by notice in writing, require a bankrupt, the bankrupt's spouse, or any other person to deliver to him any document relating to the dealings or property of the bankrupt in that person's possession or under the person's control.

(2) Subject to subsection (3), no person may, as against the Official Receiver, withhold possession of, or claim a privilege or *lien* over—

(a) a deed or instrument that belongs to the bankrupt; or

(b) accounting records, accounts, receipts, bills, invoices, or other papers relating to the bankrupt's accounts, trade dealings or business.

(3) A person who is not the bankrupt's spouse may claim as a preferential creditor under paragraph 1 (3) (a) (ii) of the Fourth Schedule where the person—

(a) has performed services in connection with the bankrupt's accounting records or a deed or instrument belonging to the bankrupt; and

(b) has not been paid, or has not been paid in full, for those services; and

(c) would, but for subsection (1), ordinarily have had a privilege or *lien* over the accounting records, deed or instrument, as the case may be.

(4) The limit to which the person may claim as a preferential creditor under paragraph 1 (3) (a) (ii) of the Fourth Schedule is 10 per cent of the total value of the services stated in subsection (2), up to a maximum amount of 20,000 rupees.

Section D – Powers and duties of Official Receiver

54. Official Receiver's powers

(1) The Official Receiver shall have and exercise the powers set out in the Fifth Schedule.

(2) Subject to subsection (3), the Official Receiver may, on such terms as he thinks appropriate—

(a) sell the bankrupt's property by public auction or public tender to one or more persons, in such parcels or in such order as he thinks fit;

(b) buy in at an auction of the bankrupt's property;

(c) rescind or vary a contract for the sale of the bankrupt's property;

(d) for the purposes of paragraph (a), sell the whole of the bankrupt's property to one person; or

(e) for the purposes of paragraph (a), sell the bankrupt's property in parcels and in any order.

(3) The Official Receiver may not sell any of the bankrupt's property until after the date fixed for the first creditors' meeting, except where—

(a) the property is perishable or likely to fall rapidly in value;

(b) in the Official Receiver's opinion, the sale of the property might be prejudiced by delay; or

(c) expenses are likely to be incurred by any delay, and before selling, the Official Receiver consults a creditor or creditors whom the Official Receiver considers to be representative of the interests of creditors.

(4) For the purposes of sale by public auction or public tender under subsection (2) (a), the Official Receiver—

(a) may instruct a licensed auctioneer to conduct the sale; and

(b) shall ensure that the sale is advertised at least twice at an interval of 7 days between the advertisements in 2 daily newspapers circulating widely in Mauritius and notice of the sale is given to the bankrupt in each case not less than 14 days before the date of the sale.

(5) Subject to this Act, the Official Receiver may sell the following property of the bankrupt by private contract—

(a) perishable property or property that is likely to fall rapidly in value;

(b) property that is unsold after being offered for sale by public auction or public tender;

(c) property that the Official Receiver considers unnecessary or inadvisable to sell by public auction or public tender, because of its nature, situation, value or other special circumstance;

(d) property authorised by a resolution of creditors to be sold by private contract in accordance with the authority given by the creditors; and

(e) company securities, Government securities and local authority securities, if sold on a securities market operated by a securities exchange licensed under the Securities Act.

(6) The title of a purchaser of the bankrupt's property from the Official Receiver under a document that is made in the exercise of the Official Receiver's power of sale under this section—

(a) cannot be challenged except on the ground of fraud; and

(b) is not affected by an absence of authority to sell, or the improper or irregular exercise of the power of sale.

55. Bank account and investment

(1) The Official Receiver shall have a bank account and pay into that account all money that he receives in that capacity in such manner as may be prescribed.

(2) The Official Receiver may invest money that is not immediately required to be paid out in the administration of an estate in an investment of a type approved by the Minister, and shall credit to that estate the interest or dividends that accrue on the investment.

56. Official Receiver's discretion

(1) The Official Receiver shall use his discretion in the administration of a bankrupt's property, but shall have regard to the resolutions of the creditors at creditors' meetings.

(2) The Official Receiver or a creditor may apply to the Court for directions where the Official Receiver or creditor believes that a resolution of the creditors—

(a) conflicts with this Act or any other enactment; or

(b) is unjust or unfair.

Sub-Part III – End of Bankruptcy

Section A – Discharge

57. Automatic discharge

(1) Subject to section 19 (4) and this section, a bankrupt is automatically discharged from bankruptcy 3 years after adjudication, but may apply to be discharged earlier.

(2) A bankrupt shall not be automatically discharged where—

(a) the Official Receiver or a creditor has objected under subsection (4) and the objection has not been withdrawn at the end of 3 years after adjudication;

(b) the bankrupt has to be publicly examined under section 51 and that examination has not taken place; or

(c) the bankrupt is undischarged from an earlier bankruptcy.

(3) The automatic discharge of a bankrupt has the same effect as if the Court made an order for the bankrupt's discharge.

(4) The Official Receiver or, with the permission of the Court, a creditor may object to a bankrupt's automatic discharge in such manner as may be prescribed.

(5) (a) An objection to the automatic discharge of a bankrupt may be withdrawn in such manner as may be prescribed.

(b) The bankrupt is automatically discharged on the withdrawal of an objection where—

(i) 3 years have elapsed after adjudication; and

(ii) there is no other objection to the discharge that has not been withdrawn.

58. Application for discharge

(1) A bankrupt may at any time apply to the Court for an order of discharge, unless the Court has previously refused an application for a discharge, and specified the earliest date when the bankrupt may again apply.

(2) The Official Receiver shall, as soon as practicable after the expiry of 3 years from the date of adjudication, summon the bankrupt to be publicly examined by the Court concerning his discharge, and the Court shall conduct the examination where—

(a) the Official Receiver or a creditor has objected to the bankrupt's automatic discharge;

(b) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or

(c) the bankrupt has been required to be publicly examined under section 51 and that examination has not taken place.

59. Official Receiver's report

(1) The Official Receiver shall prepare a report and file it in the Court where—

(a) the bankrupt has applied for a discharge; or

(b) the Official Receiver has summoned the bankrupt to be examined under section 58 (2).

(2) The Official Receiver shall report as to—

(a) the bankrupt's affairs;

(b) the causes of the bankruptcy;

(c) the bankrupt's performance of his duties under this Act;

(d) the manner in which the bankrupt has complied with an order of the Court;

(e) the bankrupt's conduct before and after adjudication; and

(f) any other matter that would assist the Court in making a decision as to the bankrupt's discharge.

60. Notice of opposition to discharge

(1) A creditor shall give notice to the Official Receiver and the bankrupt where he intends to oppose the bankrupt's discharge on a ground that is not mentioned in the Official Receiver's report.

(2) The notice shall—

(a) set out the ground for opposing the discharge; and

(b) be given within the prescribed time.

61. Grant or refusal of discharge

(1) Where the Court hears an application for discharge, or conducts the examination of the bankrupt under section 58 (2), the Court may, having regard to all the circumstances of the case—

(a) immediately discharge the bankrupt;

(b) discharge the bankrupt on such conditions as it thinks appropriate;

(c) discharge the bankrupt but suspend the order for a period;

(d) discharge the bankrupt, with or without conditions, at a specified future date; or

(e) refuse an order of discharge, in which case the Court may specify the earliest date when the bankrupt may apply again for discharge.

(2) Where the Court discharges the bankrupt on the condition that the bankrupt consents to any judgment, and the bankrupt does consent, the Court may vary the judgment as it thinks appropriate.

62. Engaging in business after discharge

(1) The Court may, where it makes an order of discharge or at any earlier time, prohibit the bankrupt after discharge from doing any of the following acts without the Court's permission—

(a) entering into, carrying on, or taking part in the management or control of any business or class of business;

(b) being a director of, or being concerned in or taking part directly or indirectly in the management of, any company;

(c) being employed by a relative of the bankrupt; or

(d) being employed by a company, trust or trustee, or a partnership or incorporated association carrying on any business that is managed or controlled by a relative of the bankrupt.

(2) The Court may make an order under subsection (1) for a specified period or without a time limit and may at any time vary or cancel the prohibition.

63. Reversal of order of discharge

(1) The Court may, on the application of the Official Receiver or a creditor, reverse the discharge of a bankrupt at any time before 2 years after—

(a) the discharge, in the case of an absolute discharge;

(b) the discharge takes effect, in the case of a discharge that is conditional or suspended.

(2) Where the Court reverses a discharge, the Court may then, or at any time after, make a new order of discharge, whether absolute, suspended or conditional.

(3) The Court may reverse a discharge where—

(a) the bankrupt has been given notice of the application; and

(b) the Court is satisfied that facts have been established that—

(i) were not known to the Court when it made the order of discharge; and

(ii) had the Court known of them, it would have been justified in refusing a discharge or discharging the bankrupt on conditions.

(4) The Court shall not reverse a discharge where the facts relied on in the application, at the time when the Court made an order discharging the bankrupt—

(a) were known to the applicant; or

(b) could have been known if the applicant had inquired with reasonable diligence.

(5) The reversal of a discharge shall not prejudice or affect any right or remedy that any person other than the bankrupt would have had if the discharge had not been reversed.

(6) Any property that has been acquired by the bankrupt after discharge and that is vested in the bankrupt at the date of the reversal—

(a) shall vest in the Official Receiver subject to any encumbrance; and

(b) shall be applied by the Official Receiver to pay debts that the bankrupt has incurred since the date of discharge.

64. Conditions of discharge too onerous

(1) A bankrupt who cannot comply with any condition of his discharge may apply to the Court for an absolute discharge.

(2) The Court may discharge the bankrupt absolutely where it is satisfied that the bankrupt's inability is due to circumstances for which the bankrupt should not reasonably be held responsible.

65. Release from debts

(1) On discharge, a bankrupt is released from all debts provable in the bankruptcy except those listed in subsection (2).

(2) The bankrupt shall not be released from—

(a) a debt or liability incurred by fraud or fraudulent breach of trust to which the bankrupt was a party;

(b) a debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;

(c) a judgment debt or an amount payable for which the bankrupt is liable under section 42 or 61; or

(d) an amount payable under a maintenance order.

66. Other effects of discharge

(1) A discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

(2) A discharge shall not release any person who, at the date of adjudication, was—

(a) a business partner of the bankrupt;

(b) a co-trustee with the bankrupt;

(c) jointly bound or had made any contract with the bankrupt; or

(d) a surety or in the nature of surety for the bankrupt.

(3) A discharged bankrupt shall assist the Official Receiver, as required by the Court or the Official Receiver, in the realisation and distribution of the bankrupt's property that is vested in the Official Receiver.

(4) Where the Court has refused a bankrupt a discharge or discharged a bankrupt but suspended the discharge, that information shall be entered in the public register maintained under section 378.

(5) The Director and the Official Receiver may not be sued in relation to any publication made under this section in good faith and with reasonable care.

Section B – Annulment of adjudication

67. Annulment

(1) The Court may, on the application of the Official Receiver or any person interested, annul an adjudication where the Court—

(a) considers that the bankrupt should not have been adjudicated bankrupt;

(b) is satisfied that the bankrupt's debts have been fully paid or satisfied;

(c) considers that the liability of the bankrupt to pay his debts should be reviewed because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or

(d) has approved a composition under Section A of Sub-part IV of Part II.

(2) In the case of an application on one of the grounds specified in subsections (1) (a) to (c) by an applicant who is not the Official Receiver—

(a) a copy of the application shall be served on the Official Receiver in the manner and within the time that the Court directs; and

(b) the Official Receiver may appear on the hearing of the application as a party to the proceedings.

(3) An adjudication shall be annulled—

(a) from the date of adjudication, in the case of an application on the ground specified in subsection (1) (a);

(b) from the date of the Court's order of annulment, in the case of an application on one of the grounds specified in subsection (1) (b) to (d).

(4) In the case of an application for annulment on the ground that the adjudication should not have been made because of a defect in form or procedure, the Court may, in addition to annulling the adjudication, exercise its powers under subsection (5) to correct the defect and order that the application for adjudication be reheard.

(5) Where the Court annuls the adjudication on one of the grounds specified in subsection (1) (a) to (c)—

(a) the Court may, on the Official Receiver's application, fix an amount as reasonable remuneration for the Official Receiver's services and order that it be paid, in addition to any costs that may be awarded;

(b) the Court shall make any determination under paragraph (a) promptly;

(c) the fee shall be paid into the Consolidated Fund;

(d) the Official Receiver shall not be entitled to remuneration under section 379 for those services.

(6) Where an order of annulment is made following an application by a person other than the Official Receiver, that person shall, as soon as practicable, notify the Official Receiver of the order and, at the same time, serve a copy of the order on the Director.

[S. 67 amended by s. 11 (a) of Act 4 of 2017 w.e.f. 20 May 2017.]

68. Effect of annulment

(1) On the annulment of an adjudication, all property of the bankrupt vested in the Official Receiver on bankruptcy and not sold or disposed of by the Official Receiver shall revest in the bankrupt without the necessity for any conveyance, transfer or assignment.

(2) Any contract, sale, disposition or payment duly made or anything duly done by the Official Receiver before the annulment—

(a) shall not be prejudiced or affected as to validity by the annulment; and

(b) shall have effect as if it had been made or done by the bankrupt while no adjudication was in force.

Sub-Part IV – Alternatives to Bankruptcy

Section A – Composition during bankruptcy

69. Preliminary resolution

(1) The creditors of a bankrupt may accept a composition in satisfaction of the debts due to them from the bankrupt by passing a special resolution that contains the terms of the composition to be known as the preliminary resolution.

(2) If there is more than one class of creditor, the delay of one class in accepting, or the failure of one class to accept, shall not prevent any other class from accepting the composition.

70. Confirming resolution

(1) The composition shall be of no effect unless the creditors confirm the composition by a second special resolution to be known as the confirming resolution.

(2) The creditors may confirm the composition on terms that are different from the terms contained in the preliminary resolution, if the final terms are at least as favourable to the creditors as the terms set out in the preliminary resolution.

(3) The notice of the meeting to pass the confirming resolution shall—

(a) state generally the terms of the composition; and

(b) be accompanied by a report by the Official Receiver.

(4) Where the composition provides for the payment in full of all creditors whose respective debts do not exceed a certain amount, that class of creditors shall not be counted either in number or value for the purpose of counting the requisite majority of creditors for passing the confirming resolution.

71. Composition with members of partnership

(1) Where the members of a partnership have been adjudicated bankrupt, the joint creditors and each class of separate creditors may make separate compositions.

(2) In that case, the majorities of creditors required for passing the confirming resolution are the separate majorities of each class, but otherwise the joint and separate creditors shall be counted as one body for voting.

72. Court to approve composition

(1) The Court shall approve a composition if it is to be binding.

(2) A composition approved by the Court shall bind all the creditors in respect of provable debts due to them by the bankrupt.

(3) The Court may refuse to approve a composition where it considers that—

(a) section 69 or 70 has not been complied with;

(b) the terms of the composition are not reasonable or are not calculated to benefit the general body of creditors;

(c) the bankrupt is guilty of misconduct that justifies the Court in refusing, qualifying or suspending the bankrupt's discharge; or

(d) for any other reason, it should not approve the composition.

(4) The Court shall not approve a composition where it does not provide for the payment, before any other debts are paid, of those debts that have priority under Section E of Sub-part IV of Part III.

(5) The bankrupt or the Official Receiver may apply to the Court to approve a composition.

(6) Notice of the application shall be given to each creditor.

(7) Before approving a composition, the Court shall—

(a) receive a report from the Official Receiver as to the terms of the composition and the bankrupt's conduct; and

(b) hear any objection by or on behalf of a creditor.

(8) Where the Court approves a composition, it may correct or supply any formal or accidental error or omission, but may not alter the substance of the composition.

73. Deed of composition

(1) As soon as practicable after the Court has approved a composition—

(a) the bankrupt and the Official Receiver shall execute a deed of composition for putting it into effect; and

(b) the Official Receiver shall apply to the Court for confirmation of the deed.

(2) Where it is satisfied that the deed conforms with the composition that it has earlier approved, the Court shall, on payment to the Official Receiver of such commission as may be prescribed—

(a) direct that the deed be entered and filed in the Court; and

(b) annul the adjudication.

(3) An annulment under subsection (2) shall not revest the bankrupt's property in the bankrupt in accordance with section 68.

(4) Where the Court has confirmed the deed and annulled the adjudication—

(a) the deed binds all the creditors in all respects as if they had each executed the deed; and

(b) the bankrupt's property to which the deed relates vests and must be dealt with as provided in the deed.

74. Unpaid balance of debt

(1) A bankrupt who makes a composition with his creditors remains liable for the unpaid balance of a debt where—

(a) the bankrupt, by means of fraud—

(i) incurred or increased the debt; or

(ii) on or before the date of the composition, obtained forbearance on the debt; and

(b) the creditor who has been defrauded has not agreed to the composition.

(2) In subsection (1) (b), a creditor does not agree to the composition merely by proving the debt and accepting payment of a distribution of the assets in the estate.

75. Deadlines for steps to approve composition and execute deed

(1) The deadlines for steps to approve the composition and execute the deed are—

(a) the confirming resolution shall be passed within one month after the preliminary resolution is passed;

(b) the Court shall approve the composition within one month after the confirming resolution is passed; and

(c) the bankrupt shall execute the deed of composition within 5 working days after the Court approves the composition or, if the Court allows the bankrupt additional time, within that time.

(2) Where any of the deadlines referred to in subsection (1) is not kept—

(a) immediately on the expiry of the deadline, the proceedings in the bankruptcy resume as if there had been no confirming resolution; and

(b) none of the periods specified in subsection (1) counts in the calculation of a period of time for any purpose of this Act.

76. Procedure following entry of deed

(1) The Court shall, after the deed of composition has been entered on the file of the Court—

(a) endorse on the deed that it has been entered and filed in Court; and

(b) if requested by the Official Receiver, deliver the deed to the Official Receiver.

(2) The Official Receiver shall, as soon as practicable after the deed has been entered—

(a) take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate registry or office, and then return the deed to the file of the Court; and

(b) subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition, as the case may be, of—

(i) the bankrupt's property; or

(ii) so much of the bankrupt's property as the Official Receiver possesses and that, under the composition, revests in the bankrupt or the trustee.

77. Enforcement of composition

The Court may—

(a) on the application of a person aggrieved, order that default in payment of any composition approved by the Court be remedied; or

(b) on the application of a person interested, enforce the provisions of any composition approved by the Court.

Section B – Proposal

78. Interpretation of section B

(1) In this section—

"debt" means a debt that would be provable in the insolvent's bankruptcy;

"insolvent" means a person who is not bankrupt, but who is unable to pay his debts as they become due.

(2) The debt of an insolvent is provable under this section.

79. Making of proposal

(1) An insolvent may make a proposal to creditors for the payment or satisfaction of his debts.

(2) The proposal may include an offer—

(a) to assign all or any of the insolvent's property to a trustee for the benefit of the creditors;

(b) to pay the insolvent's debts by instalments;

(c) to compromise the insolvent's debts at less than 100 cents in the rupee;

(d) to pay the insolvent's debts at some time in the future; or

(e) for any other arrangement for the satisfaction of the insolvent's debts.

(3) The proposal may include any other conditions for the benefit of the creditors and may be accompanied by a security or guarantee.

(4) The proposal shall be—

(a) in the prescribed form; and

(b) accompanied by a statement of affairs that is in the prescribed form and verified by affidavit.

(5) The statement of affairs shall set out—

(a) the insolvent's assets, debts, and liabilities;

(b) the name, address and occupation of each of the insolvent's creditors; and

(c) the securities (if any) held by each creditor.

(6) The proposal shall—

(a) be signed by the insolvent;

(b) have endorsed on it the name of a person who is willing to act as a trustee for the creditors; and

(c) include a statement by that person that he is willing to act as trustee.

80. Filing of proposal

(1) The proposal shall be filed in Court and the trustee referred to in section 79 (6) (b) shall become the provisional trustee.

(2) The insolvent may not, while waiting for the decision of the creditors and the Court, withdraw the proposal or any security or guarantee tendered with it, unless he obtains the permission of the Court.

(3) The time when the proposal is filed in Court is the time when the claims of creditors are determined.

(4) Where the creditors at a meeting under section 81 do not accept the proposal—

(a) the chairperson of the meeting shall return the proposal to the Court with his signed endorsement "Not accepted by creditors"; and

(b) the Court shall cancel the proposal.

81. Meeting of creditors

(1) The provisional trustee shall, as soon as practicable, call a meeting of creditors by posting to every known creditor at the creditor's last known address—

(a) a notice of the date, time and place of the meeting;

(b) a summary of the insolvent's assets and liabilities;

(c) a copy of the proposal and particulars of any security or guarantee;

(d) a form of proof of debt; and

(e) a postal vote in the prescribed form.

(2) A creditor who has proved a claim in the prescribed manner may vote on the proposal by sending a postal vote that reaches the provisional trustee before or at the meeting.

(3) Where the provisional trustee receives a postal vote before or at the meeting, the postal vote has effect as if the creditor had been present and voted at the meeting.

(4) The provisional trustee shall chair the meeting of creditors, unless the creditors elect their own chairperson.

(5) The creditors may—

(a) examine the insolvent;

(b) accept the proposal with or without amendment by passing a resolution that sets out the proposal in its final form; and

(c) confirm the provisional trustee as trustee, or appoint another person who is willing to act as trustee, in which case that person becomes the trustee.

(6) The resolution accepting the proposal shall be decided by a majority in number and three fourths in value of the creditors who—

(a) vote; and

(b) are personally present or are represented at the meeting by proxy.

(7) Where the insolvent consents, the creditors may include in the proposal terms for the supervision of the insolvent's affairs.

82. Court to approve proposal

(1) After the proposal has been accepted by the creditors, the trustee shall, as soon as practicable—

(a) apply to the Court for approval of the proposal; and

(b) send notice of the hearing of the application to the insolvent and to every known creditor.

(2) The Court shall, before approving a proposal, hear any objection that is made by or on behalf of a creditor.

(3) The Court may refuse to approve the proposal where it considers that—

(a) this section has not been complied with;

(b) the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors; or

(c) for any other reason, it is not expedient that the proposal be approved.

(4) The Court shall not approve a proposal where it does not provide for the payment, before any other debts are paid, of—

(a) those debts that would have priority under this Act if the insolvent was adjudicated bankrupt;

(b) the trustee's fees and expenses that are properly incurred by the trustee in respect of the proposal; and

(c) costs incurred by a person other than the insolvent in organising and conducting a meeting of creditors for the purpose of voting on a proposal.

(5) Where it approves the proposal, the Court may correct or supply any formal or accidental error or omission, but may not alter the substance of the proposal.

(6) A proposal that is approved by the Court is binding on all the creditors whose debts are provable under this subsection and are affected by the terms of the proposal.

83. Enforcement steps

(1) Subject to subsection (3), a creditor whose debt is provable under this section shall not take any of the steps listed in subsection (2) in respect of the debt—

(a) after the Court has approved the proposal; and

(b) while the proposal remains in force.

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

(a) filing a creditor's application for the insolvent's adjudication;

(b) proceeding with a creditor's application for the insolvent's adjudication that was filed before the proposal was filed;

(c) enforcing any civil remedy against the insolvent's person or property; and

(d) beginning any legal proceedings in respect of the debt.

(3) A creditor may take any of the steps listed in subsection (2) with the permission of the Court given on terms that the Court thinks appropriate.

84. Duty of insolvent and trustee

(1) After the Court has approved the proposal,—

(a) the insolvent shall do everything that is necessary to put the proposal into effect; and

(b) the trustee shall—

(i) take control of the property that is the subject of the proposal;

(ii) administer and distribute that property according to the terms of the proposal; and

(iii) generally give effect to the proposal.

(2) The trustee may sell the property—

(a) according to the terms of the proposal, where it specifies the method of sale; or

(b) according to section 54, where the proposal does not specify the method of sale.

(3) The trustee shall file with the Court a summary of receipts and payments—

(a) for each 6-month period following Court approval of the proposal, within one month after the end of the period; and

(b) for the period between the end of the last 6-month period and the date when the trustee stops acting as trustee, within one month after the trustee has stopped acting.

85. Cancellation or variation of proposal

(1) At any time after it has approved a proposal, the Court may, where it is satisfied that a ground listed in subsection (2) applies—

(a) on the application of the trustee or any creditor, vary or cancel the proposal;

(b) if asked to do so by the applicant or any other creditor, adjudicate the insolvent bankrupt.

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

(a) the insolvent's statement of affairs accompanying the proposal did not substantially set out the true position or the insolvent or gave wrong or misleading replies at his examination, and it was unlikely that the proposal would have been accepted if the insolvent had disclosed the true facts;

(b) the insolvent has failed to carry out or comply with the terms of the proposal;

(c) the creditors generally will suffer injustice or undue delay if the proposal proceeds; and

(d) for any other reason, the proposal ought to be varied or cancelled.

(3) On cancellation of the proposal, unless the Court orders otherwise, all property of the insolvent vested in the trustee and not sold or disposed of by the trustee vests, without the necessity for any conveyance, transfer or assignment—

(a) in the insolvent; or

(b) if the Court cancels the proposal and adjudicates the insolvent bankrupt, in the Official Receiver.

(4) An order cancelling the proposal, or cancelling the proposal and adjudicating the insolvent bankrupt, shall not prejudice or affect the validity of any contract, sale, disposition or payment duly made or anything duly done under the proposal while it was in force.

(5) Where the insolvent files an application for his own adjudication, the proposal shall be cancelled as if it was cancelled by the Court.

Section C – Summary instalment order

86. Application for order

(1) The Official Receiver may make a summary instalment order on the application, in such form as may be prescribed, of—

(a) the debtor; or

(b) a creditor, with the debtor's consent.

(2) An application by the debtor shall state—

(a) that the debtor proposes to pay the creditors in full;

(b) the amount in the rupee that the debtor proposes to pay;

(c) except on good cause shown, the name and address of the debtor's proposed supervisor;

(d) the total amount of the weekly or other instalments that the debtor proposes to pay; and

(e) the details of—

(i) the debtor's full name and address;

(ii) the debtor's property;

(iii) the names and addresses of each creditor;

(iv) the amount and nature of each of the creditors' debts;

(v) whether any of the debts are secured and the value of the security;

(vi) whether any of the debts are guaranteed by any person;

(vii) the amount of the debtor's earnings;

(viii) the name and address of the debtor's employer, if any; and

(ix) any other matter that may be prescribed.

87. Making of order

(1) The Official Receiver may make a summary instalment order where he is satisfied that—

(a) the debtor's total unsecured debts that would be provable in the debtor's bankruptcy are not more than 500,000 rupees or such amount as may be prescribed; and

(b) the debtor is unable immediately to pay those debts.

(2) An order under subsection (1) shall provide that—

(a) the debtor pays his debts by instalments or otherwise; and

(b) the debts are paid in full or at the earliest date that the Official Receiver considers appropriate.

(3) The payment of instalments under a summary instalment order may be spread over a period of—

(a) up to 3 years; or

(b) up to 5 years, if justified by special circumstances.

(4) Before making the order, the Official Receiver shall give at least 14 days' notice to all known creditors or, at the Official Receiver's option, advertise in a newspaper circulating in the place where the debtor was resident and carried on business, a notice that application has been made to the Official Receiver for the making of a summary instalment order, and he shall allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.

(5) A summary instalment order shall not be invalid where the total amount of the debts proved is more than the amount specified in subsection (1) (a), but in that case—

(a) the supervisor may refer the matter to the Official Receiver; and

(b) the Official Receiver may, if the Official Receiver thinks appropriate, cancel the order.

(6) The debtor or any creditor or the supervisor may at any time apply to the Official Receiver to vary or discharge a summary instalment order, and the Official Receiver may make such order as the Official Receiver thinks appropriate in the circumstances.

88. Additional order

In addition to an order for the payment of the debts by instalments, the Official Receiver may make orders—

(a) regarding the debtor's future earnings or income;

(b) regarding the disposal of goods that the debtor owns or possesses; or

(c) giving the supervisor power to—

(i) direct the debtor's employer to pay all or part of the debtor's earnings to the supervisor; and

(ii) supervise payment, out of the debtor's earnings or income, the reasonable living expenses of the debtor and his or her dependent relatives.

89. Appointment of supervisor

(1) Subject to subsection (2), a summary instalment order shall appoint a suitable and willing person to supervise compliance by the debtor with the terms of the order.

(2) The Official Receiver may dispense with the appointment of a supervisor where he thinks it appropriate, and in that case this section shall apply as if the debtor was the supervisor, but section 90 shall apply as if the Official Receiver was the supervisor.

(3) The Official Receiver may, where he thinks appropriate, require the supervisor to provide a bond to secure the supervisor's performance of his obligations specifying the amount of the bond and the person to whom it must be given.

90. Role of supervisor

(1) A supervisor shall supervise the debtor's compliance with the terms of the summary instalment order and any other order made under section 87.

(2) A supervisor shall send a notice of the summary instalment order to the Director and to every creditor—

(a) known to the supervisor;

(b) whose name is shown on the debtor's application for the order; or

(c) who has proved a debt under section 92.

(3) A supervisor may charge remuneration for carrying out his duties as supervisor according to such rates as may be prescribed.

(4) The Official Receiver may, by written notice, require a supervisor or a past supervisor to provide him within a reasonable period with any document relating to the debtor's property, conduct or dealings in the supervisor's or past supervisor's possession or under his control.

(5) The Official Receiver may terminate a supervisor's appointment where he considers that the supervisor has failed to supervise the debtor's compliance adequately, and may appoint a replacement supervisor.

91. Proceedings against debtor

(1) In this section, "proceedings against a debtor" means proceedings against the person or property of the debtor in respect of a debt that has been—

(a) shown in the debtor's application for the summary instalment order;

(b) included in the summary instalment order; or

(c) notified to the supervisor.

(2) After a summary instalment order has been made, no person shall begin or continue proceedings against a debtor unless—

(a) the Official Receiver authorises a creditor to begin or continue the proceedings on such terms as he considers appropriate; or

(b) the debtor is in default under the order.

(3) Where an action is pending before a Court and the Official Receiver gives notice to the Court that a summary instalment order has been made, the Court—

(a) shall stay the proceedings on receiving notice of the order; and

(b) may award all or part of the creditor's costs incurred up to the time of the Court's notification, and may certify accordingly for the purpose of the creditor proving the debt under this section.

92. Proof of debt

(1) A creditor who has proved his debt before the supervisor may be included as a creditor in the administration of the debtor's estate under the summary instalment order for the amount of the debt.

(2) A creditor may object to the supervisor's acceptance or rejection of a proof of debt by applying to the Official Receiver.

(3) Where a creditor objects under subsection (2), the Official Receiver may give such directions as he thinks appropriate as to the acceptance or rejection of the proof.

(4) A person who becomes a creditor of the debtor after a summary instalment order has been made, and who proves a debt before the supervisor—

(a) may elect to be included in the administration of the debtor's estate; and

(b) may be paid a dividend under the order only after creditors who became creditors of the debtor before the order was made and who have been included as a creditor in the administration and have been paid under the order.

93. Payment of debtor's earnings to supervisor

(1) Where a supervisor, under a power given by a summary instalment order, directs the debtor's employer to pay to him the debtor's earnings, the amount that the employer must pay to the supervisor are recoverable as a debt from the employer, and the supervisor's receipt shall be a complete discharge to the employer for the debt.

(2) A payment by the employer in contravention of the supervisor's direction to pay the supervisor will discharge the liability of the employer to the supervisor for the amount of the payment where it is made—

(a) with the consent of the supervisor or the Official Receiver; or

(b) to a person who is not the debtor and who has a better legal claim to it than the debtor.

94. Distribution of money paid by debtor

(1) Every supervisor shall distribute the money paid by the debtor under the summary instalment order in the following order—

(a) first, payment of the costs of administration in accordance with such scale as may be prescribed;

(b) second, if applicable, the taxed costs of the creditor who applied for the order;

(c) third, payment of the debts in accordance with the summary instalment order; and

(d) fourth, payment of any surplus to the debtor.

(2) The debtor shall be discharged from the unsecured debts to which the order relates if the supervisor pays, from the money received under the order, the amounts specified in subsection (1) (a) to (c) in full.

95. Default by debtor

(1) A debtor who defaults in paying any sum due under a summary instalment order shall be presumed, unless the contrary is proved, to have—

(a) been able to pay the sum from the date of the order; and

(b) refused or neglected to pay it.

(2) Where a debtor defaults in making payment in accordance with the order, unless the Court otherwise orders—

(a) proceedings that have been stayed under section 91 may begin or continue; and

(b) any period during which proceedings were so stayed must be added to any period of limitation that applies to the proceedings.

PART III – WINDING UP AND ALTERNATIVES

Sub-Part I – Unregistered Corporations

96. Application of Sub-Part I

(1) The Court or a liquidator may, subject to this Sub-part, exercise any power or do any act in the case of an unregistered corporation which it may exercise or do in the winding up of a company.

(2) An unregistered corporation may be wound up in accordance with this Sub-Part.

(3) (a) The principal place of business of an unregistered corporation in Mauritius shall, for all the purposes of the winding up, be its registered office.

(b) No unregistered corporation shall be wound up voluntarily.

(c) An unregistered corporation may be wound up where—

(i) it is dissolved, has ceased to have a place of business in Mauritius, has a place of business in Mauritius only for the purpose of winding up its affairs or has ceased to carry on business in Mauritius;

(ii) it is unable to pay its debts; or

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

97. Contributories

(1) Where an unregistered corporation is wound up, every person shall be a contributory who—

(a) is liable to pay or contribute to the payment of—

(i) any debt or liability of the corporation;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(b) where the corporation is dissolved in the place in which it is formed or incorporated, was so liable immediately before the dissolution.

(2) Every contributory shall be liable to contribute to the assets of the corporation all sums due from him in respect of any liability referred to in subsection (1).

(3) On the death or bankruptcy of a contributory, section 126 shall, with such adaptations and modifications as may be necessary, apply to an unregistered corporation as it applies to a company.

98. Leave of Court

(1) Section 105 shall, in the case of an unregistered corporation, apply to actions and proceedings against a contributory of the corporation where the application to stay or restrain is made by a creditor.

(2) Where an order has been made for winding up an unregistered corporation, no action shall be proceeded with or commenced against a contributory of the corporation in respect of any debt of the corporation except by leave of the Court and subject to such terms as the Court thinks appropriate.

99. Outstanding assets

(1) Where the place of incorporation or origin of an unregistered corporation is in a designated country and the corporation has been dissolved and there remains in Mauritius any outstanding property which was vested in the corporation or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not dealt with by the corporation or the liquidator before the dissolution, the property, except called and uncalled capital, shall be and become vested for the interest of the corporation or its liquidator in the property at the date the corporation was dissolved, in such persons as are entitled thereto according to the law of the place of incorporation or origin of the corporation.

(2) Where the place of origin of an unregistered corporation is Mauritius, Part XXVI of the Companies Act shall, with such adaptations and modifications as may be necessary, apply in respect of that corporation.

Sub-Part II – Winding Up of Companies

Section A – General

100. Modes of winding up

(1) The winding up of a company may be effected—

(a) by way of a winding up order made by the Court;

(b) by way of a voluntary winding up commenced by a resolution passed by the company; or

(c) by way of a resolution of creditors passed at the watershed meeting.

(2) A voluntary winding up may be—

(a) a creditors' voluntary winding up where the company is insolvent and the liquidator is appointed by a meeting of creditors; or

(b) a shareholders' voluntary winding up where the company is solvent and the liquidator is appointed by a shareholders' meeting.

101. Commencement of winding up

(1) Where before the presentation of a petition to the Court under section 102 a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) Where an order directing the winding up of a company is made under section 178 (2) (g) of the Companies Act, the winding up shall commence on the date and time specified in the order.

(3) In every other case of a winding up by the Court, the winding up shall be deemed to have commenced at the time of the making of the winding up order.

(4) Where—

(a) a liquidator is appointed under section 108 (1), the Court shall record on the order appointing the liquidator the date on which, and the time at which, the order was made;

(b) a liquidator is appointed under section 108 (2), the board of the company shall cause to be recorded in the instrument appointing the liquidator the date on which, and the time at which, the liquidator was appointed;

(c) a liquidator is appointed under section 100 (2) (b), the shareholders shall cause to be recorded in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution is passed;

(d) a liquidator is appointed by way of a resolution of creditors at a watershed meeting, the administrator shall record in the resolution the date on which, and the time at which, the resolution was passed.

(5) If any question arises as to whether on the date on which a liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

Section B – Winding up by Court

102. Petition for winding up

(1) Subject to subsection (3) and to section 178 (2) (g) of the Companies Act, a company may, whether or not it is being wound up voluntarily and on petition made in accordance with this section, be wound up under an order of the Court.

(2) A petition to wind up by a company may be presented by—

(a) the company;

(b) a contributory or any person who is the heir of a deceased contributory or the trustee in bankruptcy of the estate of a contributory;

(c) a shareholder;

(d) a creditor, including a contingent or prospective creditor, of the company;

(e) a liquidator;

(ea) the administrator;

(f) the Director or the Registrar of Companies; or

(g) the Financial Services Commission, where the company is a licensee thereof.

(3) In the case of a petitioner referred to in subsection (2) (b), (c) or (d), the holder of a power of attorney from the applicant may present the petition provided that the petition is accompanied by a copy of the power of attorney and a certificate signed by the attorney certifying that the power of attorney is current and has not been revoked.

(3A) Where a petition is presented under subsection (2) by a person other than the Director or Registrar of Companies, that person shall forthwith deliver to the Director a copy of the application and any other document filed in relation to the petition.

(4) (a) Only the Director may present a petition on any ground specified in subsection (5) (h), (i) or (j).

(b) The Court shall not hear a petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court.

(5) Subject to this section, a petition to wind up may be presented where—

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

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

(c) the directors have acted in the affairs of the company in their own interests rather than in the interests of the shareholders as a whole, or in any other manner which is unfair or unjust to other shareholders;

(d) the directors or managers of the company have acted to conceal the assets of the company or remove assets outside the jurisdiction with intent to defeat creditors;

(e) an inspector under Part XV of the Companies Act has reported that he is of opinion—

(i) that the company is unable to pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or creditors that the company should be wound up;

(f) the period, if any, fixed for the duration of the company by its constitution has expired or the event, if any, on the occurrence of which the constitution provides that the company is to be dissolved has occurred;

(g) the Court is of opinion that it is just and equitable to do so;

(h) a bank has carried on business in Mauritius in contravention of the Banking Act;

(i) an insurance company has carried on business in Mauritius in contravention of the Insurance Act or the Financial Services Act;

(j) the company or its officers have persistently made default in complying with this Act or the Companies Act;

(k) this Act otherwise provides that the company be wound up; or

(l) a licensee of the Financial Services Commission has carried on business in Mauritius in contravention of the Financial Services Act or the Securities Act.

[S. 102 amended by s. 28 (b) of Act 9 of 2015 w.e.f. 14 May 2015; s. 11 (b) of Act 4 of 2017 w.e.f. 20 May 2017.]

103. Preliminary costs

(1) Where a person, other than a company or a liquidator, presents a petition under section 102 and a winding up order is made, that person shall, at his own cost, prosecute all proceedings in the winding up until a liquidator is appointed.

(2) The liquidator shall, unless the Court otherwise directs, reimburse the petitioner out of the assets of the company the reasonable costs incurred by the petitioner under subsection (1).

(3) Where the company has no assets or no sufficient assets, and in the opinion of the Director a fraud has been committed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation, the taxed costs or so much of them as is not reimbursed may, with the Director's written approval to an extent specified by the Director but not in any case exceeding such sum as may be prescribed, be reimbursed to the petitioner out of the Consolidated Fund.

(4) Where a winding up order is made on the petition of a company or a liquidator, the costs incurred under subsection (1) shall, unless the Court otherwise directs, be paid out of the assets of the company as if they were the costs of any other petitioner.

104. Power of Court on petition for winding up

(1) Subject to this section, on hearing a petition to wind up, the Court may, in its discretion, grant the petition and make a winding up order, dismiss the petition, adjourn the hearing conditionally or unconditionally, adjourn the petition under section 253 in the case of a company in administration, or make such interim or other order as it thinks fit, but the Court shall not refuse to make a winding up order by reason that—

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

(b) the company has no assets; or

(c) in the case of a petition by a contributory, there will be no assets available for distribution, amongst the contributories.

(2) The Court may, at the hearing of a petition, adjourn the petition for not more than 14 days and direct that the Director prepare a report for the Court, with a copy being provided to the company and the petitioner, on whether it is appropriate in the circumstances for the company to be placed in voluntary administration under Sub-part IV.

(3) The Court may, at the hearing of a petition or at any other time, on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—

(a) direct that notices be given or any other steps be taken before or after the hearing of the petition;

(b) dispense with any notice being given or step being taken which is required by this Act or by any previous order of the Court; or

(c) give such other directions as to the proceedings as the Court thinks fit.

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

(5) Where the Court dismisses a petition and considers that the petition is frivolous or vexatious and ought not to have been brought, it may award costs against the petitioner.

104A. Order following petition by person other than Director or Registrar of Companies

Where a petition is presented under section 102 (2) by a person other than the Director or Registrar of Companies and an order is made by the Court, that person shall forthwith deliver to the Director a copy of the order.

[S. 104A inserted by s. 11 (c) of Act 4 of 2017 w.e.f. 20 May 2017.]

105. Proceedings against company

(1) At any time after the presentation of a petition under section 102 and before a winding up order is made, the company, a creditor or a contributory may, where any action or proceedings against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks appropriate.

(2) Where a winding up order has been made or a provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except—

(a) by leave of the Court; and

(b) on such terms as the Court thinks appropriate.

106. Property of company

(1) A disposition of any property of a company and a transfer of shares or alteration in the status of a shareholder made after the commencement of the winding up by the Court shall, unless the Court otherwise directs, be void.

(2) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of the winding up by the Court shall be void.

107. Lodging and service of order

A petitioner shall, within 7 days after the making of a winding up order—

(a) lodge with the Director—

(i) a copy of the order; and

(ii) the name and address of the liquidator;

(b) deliver a copy of the order to the Official Receiver;

(c) cause a copy of the order to be served on the secretary of the company or on such other person or in such manner as the Court directs; and

(d) deliver a copy of the order to the liquidator with a statement that the requirements of this section have been complied with.

108. Appointment of provisional liquidator

(1) The Court may, on the presentation of a petition under section 102 and at any time thereafter but before the making of a winding up order, and on being satisfied that—

(a) there are reasonable grounds for believing that the company is unable to pay its debts; or

(b) any of the property of the company available to meet its debts is at risk or may be removed from Mauritius,

appoint the Official Receiver or any other qualified person to be provisional liquidator who shall, subject to such limitations and restrictions as the Court may specify in the order, have and may exercise all the functions and powers of a liquidator.

(2) The provisional liquidator shall, on his appointment under subsection (1), he forthwith take into his custody or control all the property, movable or immovable, including all bank accounts and other financial assets, to which the company is or appears to be entitled.

(3) Where a winding up order is made—

(a) the Official Receiver shall, unless another person has been appointed, become the provisional liquidator and continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the Official Receiver shall, where no liquidator is appointed, summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

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(c) the Court may appoint a liquidator and, if there is a difference between the determination of the meetings of the creditors and contributories in that respect, make such order as it thinks fit;

(d) the Official Receiver shall, where a liquidator is not appointed by the Court, be the liquidator;

(e) subject to paragraph (f), the Official Receiver shall be the liquidator during any vacancy in the office of liquidator;

(f) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court.

(4) A meeting of creditors under this section shall be called and conducted in accordance with the First Schedule.

(5) Where the names and addresses of all creditors are not known to the Official Receiver, public notice of the meeting shall be advertised in at least 2 daily newspapers of wide circulation.

(6) The Official Receiver shall not be required to call a meeting of creditors under subsection (3) (b) where—

(a) he considers, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company, and any other relevant matters, that no such meeting should be held;

(b) he gives notice in writing to the creditors stating—

(i) that he does not consider that a meeting should be held;

(ii) the reasons for his views; and

(iii) that no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 28 days after receiving the notice, requiring a meeting to be called; and

(c) no notice requiring the meeting to be called is received by the Official Receiver within that period.

(7) A notice under subsection (6) (b) shall be given to every known creditor—

(a) where section 117 (1) (c) applies, together with the report and notice referred to in that subsection; or

(b) where that subsection is not applicable, at the time the Official Receiver would have been required to send the report and notice referred to in that subsection if it were applicable.

(8) A liquidator, other than the Official Receiver, appointed by the Court may resign or, on good cause shown, be removed from office by the Court.

(9) Where the Court appoints more than one liquidator, it shall declare whether anything by this Act required, or authorised to be done by the liquidator, is to be done by all or any one or more of the persons appointed.

109. Qualifications of liquidator other than Official Receiver

(1) A person other than the Official Receiver who is appointed provisional liquidator or liquidator shall not be qualified for appointment where he is—

(a) or has been an officer, auditor or employee of the company or any related corporation during the preceding 2 years;

(b) a minor, a bankrupt or a person under any physical or mental impairment;

(c) a person who has been the subject of an order under section 337 or 338 of the Companies Act;

(d) has been a receiver of the company during the preceding 3 years; or

(e) not qualified to be appointed as an Insolvency Practitioner.

(2) Where a person other than the Official Receiver is appointed provisional liquidator or liquidator, that person—

(a) shall not act as such until he has given—

(i) written notice of his appointment to the Director;

(ii) security to the satisfaction of the Official Receiver; and

(iii) satisfactory evidence to the Official Receiver that he holds professional indemnity insurance to the satisfaction of the Official Receiver; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books of the company, and generally such assistance as may be required for enabling that officer to perform his duties under this Act.

(3) For the purposes of this section, "auditor" means the auditor or partner of the audit firm that has been appointed auditor of the company.

110. Control of liquidator by Official Receiver

Where a person other than the Official Receiver is a provisional liquidator or liquidator, the Official Receiver—

(a) shall take cognisance of his conduct and, if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him, or if a complaint is made to the Official Receiver by a creditor or contributory in that behalf, inquire into the matter and take such action as he thinks fit;

(b) may require the liquidator to answer any inquiry and provide any information or documents in relation to any winding up in which he is engaged;

(c) may apply to the Court to examine him or any other person on oath concerning the winding up of the company;

(d) may direct an examination to be made of the books and vouchers of the liquidator; and

(e) may refer the matter to the Director.

111. Remuneration of liquidator

(1) A provisional liquidator or liquidator other than the Official Receiver shall be entitled to receive remuneration approved by the Court on presentation of a claim whether provisional or final at such rates and intervals as may be determined.

(2) A liquidator other than the Official Receiver shall be entitled to receive such remuneration at such rates as may be determined—

(a) subject to paragrph (b), by agreement between the liquidator and the committee of inspection;

(b) failing such agreement or where there is no committee of inspection, but subject to subsection (4), by a resolution, passed at a meeting of creditors, by a majority of not less than three-fourths in value and one half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, to be convened by the liquidator by a notice to each creditor accompanied by a statement of all his expenses incurred by the liquidator and the amount of remuneration sought by him; or

(c) failing an agreement referred to in paragraph (a) or (b) and where—

(i) the liquidator has been provided an indemnity cover by the charge holder on the basis of 5 per cent and not more than 10 per cent of the gross realisation proceeds on disposal of assets; or

(ii) where there is no indemnity cover, the fee shall be 15 per cent; and

(iii) in the case of an assetless company, the fee shall be a fixed amount to be agreed upon by the appointor and the liquidator.

(3) Where the remuneration of a liquidator is determined in the manner specified in subsection (2) (a), the Court may, on the application of a shareholder or shareholders whose shareholding represents not less than 10 per cent of the issued capital of the company made within 14 days of determination, confirm or vary the determination.

(4) Where the remuneration of a liquidator is determined in the manner specified in subsection (2) (b) the Court may, on the application of the liquidator or a shareholder referred to in subsection (3), made within 14 days of determination, confirm or vary the determination.

(5) Subject to any order of the Court, the Official Receiver when acting as a provisional liquidator or liquidator shall be entitled to receive remuneration.

112. Custody and vesting of company's property

(1) Where a provisional liquidator has been appointed or a winding up order has been made, the provisional liquidator or liquidator shall forthwith take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, order that the property of the company shall vest in the liquidator and the property shall, subject to subsection (4), vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) On the service of an order appointing a provisional liquidator or liquidator on any bank, financial institution, issuer of securities or any other person holding property or securities on behalf of or in the name of the company, the bank, institution, issuer or person shall hold that property for and at the discretion of the provisional liquidator or liquidator.

(4) Where an order is made under subsection (2), every liquidator in relation to whom the order is made shall within 7 days of the making of the order—

(a) lodge with the Director a copy of the order; and

(b) where the order relates to immovable property, deliver a copy of the order to the Registrar General.

(5) No order under subsection (2) shall have effect to transfer or otherwise vest immovable property until the appropriate entries are made with respect to the vesting by the Registrar General.

113. Statement of company's affairs

(1) There shall be delivered to the liquidator in accordance with subsection (2) a statement as to the affairs of the company as at the date of the winding up order, showing—

(a) the particulars of its assets, including any inventory of stock, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the charges held by them;

(d) the dates on which the charges were created; and

(e) such further information as the liquidator may require.

(2) The statement shall be made and supported by affidavit by one or more of the persons who are at the date of the winding up order, directors and by the secretary of the company, or by such of the following persons as the liquidator may, subject to any order made by the Court, require—

(a) a person who is or has been an officer;

(b) a person who has taken part in the formation of the company at any time within one year before the date of the winding up order; or

(c) a person who is or has been within that period an officer of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding up order or within such extended time as the liquidator or the Court may authorise.

(4) The liquidator shall, within 7 days after its receipt, file with the Court and lodge with the Director a copy of the statement and, where the Official Receiver is not the liquidator, cause a copy to be delivered to the Official Receiver.

(5) Any person making or concurring in making a statement required by subsection (1) may, subject to any order made by the Court, be allowed and paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable.

114. Liquidator's report

The liquidator shall, as soon as practicable after receipt of the statement of affairs, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(b) where the company is unable to pay its debts, as to the likely causes of the inability; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or inability to pay debts of the company or the conduct of its business.

115. Principal duty of liquidator

Subject to section 116 the principal duty of the liquidator is to act in a reasonable and efficient manner so as to—

(a) take possession of, protect, realise and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and

(b) where there are surplus assets remaining, distribute them, or the proceeds of the realisation of the surplus assets, in accordance with sections 336 and 337.

116. Liquidator not required to act in certain cases

Notwithstanding this Sub-part—

(a) except where a charge is surrendered or taken to be surrendered under paragraph 9 (1) (c) or 9 (2) of the Second Schedule,

a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge; and

(b) where—

(i) a company is wound up by order of the Court; and

(ii) the company has no assets available for distribution to creditors of the company,

the liquidator shall not be required, without the consent of the Director, to carry out any duty or exercise any power in connection with the liquidation where to do so would or would be likely to involve incurring any expense.

117. Other duties of liquidator

(1) A liquidator shall—

(a) within 7 days of being appointed or being notified of his appointment, give public notice of—

(i) his appointment;

(ii) the date of the commencement of the liquidation; and

(iii) the address and contact number to which, during normal business hours, inquiries may be directed by a creditor or shareholder;

(b) within 7 days of being appointed or being notified of his appointment, submit to the Director notice of his appointment;

(c) within the applicable period referred to in subsection (2)—

(i) prepare a list of every known creditor of the company;

(ii) except in the case of a shareholders' voluntary winding up, prepare and submit to the Director a report containing the details, including a statement of the company's affairs, proposals for conducting the liquidation, and, where practicable, the estimated date of its completion;

(iii) send a copy of the report and a notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors under section 108 (3) (b) to every known creditor and shareholder;

(d) within 28 days of the end of each period of 6 months following the commencement of the liquidation, prepare and send to every known creditor and shareholder, and submit to the Director, a report—

(i) on the conduct of the liquidation during the preceding 6 months;

(ii) containing the details referred to in paragraph (c) (iii); and

(iii) of any further proposals which the liquidator has for completing the liquidation.

(2) For the purposes of subsection (1) (c), "applicable period" means—

(a) in the case of a creditors' voluntary winding up, 14 days after the liquidator's appointment;

(b) in the case of a liquidator appointed by the Court, 28 days after the liquidator's appointment; or

(c) in either case, such longer period as the Court may allow.

(3) The Court may, on the application of a liquidator and on such terms as it thinks appropriate—

(a) exempt the liquidator from compliance with subsection (1) (c) or (d); or

(b) modify the application of those provisions in relation to the liquidator.

(4) A liquidator shall not be required to comply with subsection (1) (c) or (d) where he is satisfied that the value of the assets of the company available for distribution to unsecured creditors, not being creditors entitled to be paid in the order of priority set out in the Fourth Schedule, is not likely to exceed 10 rupees or such other sum as may be prescribed, in every one hundred rupees owed to such creditors.

(5) A liquidator who considers that the company or any person has—

(a) committed an offence in relation to the company;

(b) been guilty of any negligence, default, breach of duty or trust in relation to the company; or

(c) committed any offence that is material to the liquidation under the Companies Act, the Securities Act, the Financial Services Act or the Criminal Code,

shall as soon as practicable submit a written report of that fact to the Director and give him such information or documents, and such assistance, including further reports, and access to and facilities for inspecting and taking copies of any documents, as the Director may require.

(6) A liquidator who fails to comply with subsection (5) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(7) A liquidator shall ensure that every document entered into, made or issued by him on behalf of a company shall state in a prominent position that the company is in liquidation.

118. Powers of liquidator

(1) A liquidator has the powers set out in the Sixth Schedule and the specific powers to obtain documents and information set out in this section.

(2) A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to give him such record or document of the company in that person's possession or under that person's control as he may require.

(3) A liquidator may, by notice in writing, require—

(a) a director or former director of the company;

(b) a shareholder of the company;

(c) a person who was involved in the promotion or formation of the company;

(d) a person who is, or has been, an employee of the company;

(e) a receiver, accountant, auditor, bank officer or other person having knowledge of the affairs of the company; or

(f) a person who is acting or has at any time acted as a law practitioner for the company,

to do any of the things specified in subsection (4).

(4) A person referred to in subsection (3) may be required—

(a) to attend on the liquidator at such reasonable time or times and at such place, including a place of meeting of creditors, as may be specified in the notice;

(b) to provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests and be examined by the liquidator in connection with such affairs of the company; and

(c) to assist in the liquidation to the best of the person's ability.

(5) The Court may, on the application of the liquidator or a person referred to in subsection (3) (e) or (f), not being an employee of the company, order that that person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under subsection (4).

(6) A person referred to in subsection (3) (e) or (f) shall not be entitled to refuse to comply with a requirement of the liquidator under subsection (4) by reason only that—

(a) an application to the Court to be paid remuneration or travelling or other expenses has not been made or determined;

(b) remuneration or travelling or other expenses to which that person is entitled have not been paid in advance; or

(c) the liquidator has not paid that person travelling or other expenses.

(7) Where a person directed to attend before the liquidator under subsection (3) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the

application and call the attention of the Court to any matters which appear to him to be relevant and the Court may, after hearing any evidence given or witnesses called by the liquidator, grant the application.

(8) Notes of the examination of a person under subsection (4)—

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him; and

(d) shall be open to the inspection of any creditor or contributory.

119. Document in possession of receiver

(1) A receiver shall not be required to hand over to a liquidator any record or document that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

(2) A liquidator may, by notice in writing, require a receiver to—

(a) make such record and document available for inspection by the liquidator at any reasonable time; and

(b) provide the liquidator with copies of such record and document or extracts from them.

(3) The liquidator shall pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

(4) No person may, as against the liquidator of a company, claim or enforce a *lien* over a record or document of the company.

(5) Where the *lien* arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company that may be made under paragraph 1 (3) (a) (ii) of the Fourth Schedule to the extent of 20,000 rupees, or such other amount that may be prescribed.

(6) Nothing in this section applies to a company that was put into liquidation pursuant to section 137 (1) (b).

120. Document creating charge over property

(1) A person may be required to give a document to a liquidator under section 119 even though possession of the document creates a charge over property of a company.

(2) Production of the document to the liquidator shall not prejudice the existence or priority of the charge, but the liquidator shall make the document available to the person entitled to it for the purpose of dealing with or realising the charge or the secured property.

121. Powers of Court

(1) The Court may, on the application of a liquidator, order a person who has failed to comply with a requirement of the liquidator under sections 117 and 118 to comply with that requirement.

(2) A liquidator may apply to the Court for directions in relation to any particular matter arising in a winding up.

(3) The Court may, on the application of the liquidator, order a person to whom section 117 (4) applies, to—

(a) attend before the Court and be examined on oath or affirmation by the Court or the liquidator or a law practitioner acting on behalf of the liquidator on any matter relating to the business, accounts or affairs of the company; and

(b) produce any record or document relating to the business, accounts or affairs of the company in that person's possession or under that person's control.

(4) Where a person is examined under subsection (3) (a)—

(a) the examination shall be recorded in writing; and

(b) the person examined shall sign the record.

(5) Subject to any direction by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part or section 338 of the Companies Act.

(6) A person is not excused from answering a question put in the course of being examined under subsection (3) on the ground that the answer might incriminate or tend to incriminate that person.

(7) The testimony of the person examined is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

122. Release of liquidator and dissolution of company

(1) Where a liquidator has—

(a) (i) realised all the property of the company or so much as can in his opinion be realised without needlessly protracting the liquidation;

(ii) distributed a final dividend, if any, to the creditors;

(iii) adjusted the rights of the contributories among themselves; and

(iv) made a final return, if any, to the contributories; or

(b) resigned or been removed from his office,

he may apply to the Court for an order that he be released or for an order that he be released and that the company be dissolved.

(2) The liquidator shall present to the Court an account showing how the winding up has been conducted and the property of the company has been disposed of.

(2A) Where the liquidator is the Official Receiver, he shall, as soon as practicable, deliver to the Director a copy of the account referred to in subsection (2).

(3) Where an order is made that the company be dissolved, the company shall from, the date of the order, be dissolved accordingly.

(4) The Court—

(a) may cause a report on the accounts of a liquidator, other than the Official Receiver, to be prepared by the Official Receiver or by a qualified auditor appointed by the Court;

(b) shall, on the liquidator complying with all the requirements of the Court, take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and

(c) shall either grant or withhold the release accordingly.

(5) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks appropriate charging the liquidator with the consequence of any act or default which he may have done or made contrary to his duty.

(6) Subject to subsection (7), an order of the Court releasing a liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator.

(7) Any order under subsection (6) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(8) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from office.

(9) Where the Court has made—

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and the company be dissolved,

a copy of the order shall be lodged with the Director by the liquidator and delivered to the Official Receiver within 14 days.

[S. 122 amended by s. 11 (d) of Act 4 of 2017 w.e.f. 20 May 2017.]

123. Committee of inspection in winding up by Court

(1) The liquidator may, and shall, in the case of—

(a) a public company; or

(b) any other company if requested by a creditor or contributory,

summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so, who are to be members of the committee.

(2) If only the meeting of contributories requires a committee of inspection to be appointed, the Court shall decide whether such a committee should be appointed, and the Court shall also determine any difference as to who are to be members of the committee and make such order as it thinks fit.

(3) A committee of inspection shall consist of a number of creditors and contributories of the company or of persons holding—

(a) general powers of attorney from creditors or contributories; or

(b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(4) The liquidator may at any time on his own motion and at least twice in any period of 12 months, and shall within 7 days on the written request of a creditor or contributory, summon a meeting of creditors or of contributories to consider any appointment made and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power or special authority as specified in subsection (1), to be a member of the committee.

(5) The Seventh Schedule shall govern proceedings at meetings of a committee of inspection.

124. List of contributories

(1) The Court may, as soon as it considers fit after making a winding up order, settle a list of contributories and rectify the shareholder or members register in every case where rectification is required pursuant to this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

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

(3) The list of contributories shall, when settled, be prima facie evidence of the liabilities of the persons named therein as contributories.

125. Liability of present and past shareholders

(1) Subject to this section, where a company is wound up, every present and past shareholder shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves.

(2) Subject to subsection (3)—

(a) a past shareholder shall not be liable to contribute under subsection (1)—

(i) where he has ceased to be a member for one year or more before the commencement of the winding up; and

(ii) unless it appears to the Court that the existing shareholders are unable to satisfy the contributions required to be made by them under this Act;

(b) in the case of a company limited by shares, no contribution under subsection (1) shall be required from a shareholder in excess of the amount, if any, unpaid on the shares in respect of which he is liable as a present or past shareholder;

(c) in the case of a company limited by guarantee, no contribution under subsection (1) shall be required from a shareholder in excess of the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(d) nothing in this Act shall invalidate a provision contained in any policy of insurance or other contract whereby—

(i) the liability of individual shareholders on the policy or contract is restricted; or

(ii) the funds of the company are alone made liable in respect of the policy or contract;

(e) a sum due to a shareholder in that capacity by way of dividend, profit or otherwise shall not be a debt of the company payable to that shareholder in a case of competition between himself and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) Where a company which has been converted from an unlimited to a limited company is wound up—

(a) a past shareholder of the company who was a shareholder at the time of re-registration shall, if the winding up commences within the period of 3 years beginning with the day on which the company is re-registered, be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;

(b) where no person who was a shareholder at the time of re-registration is an exiting shareholder, a person, who, at the time, was a present or past shareholder shall, subject to subsection (2) (a) and to paragraph (a), be liable to contribute in accordance with paragraph (a);

(c) there shall be no limit on the amount which a person who, at that time, was a past or present shareholder of the company, is liable to contribute in accordance with paragraph (a).

(4) (a) A past director shall not be liable to make a further contribution—

(i) where he has ceased to hold office for a year or more before the commencement of the winding up; or

(ii) in respect of any debt or liability of the company contracted after he ceased to hold office.

(b) Subject to the constitution of the company, a director shall not be liable to make a further contribution unless it appears to the Court that the director and the other person are unable to satisfy the contributions required to be made by them under subsection (1).

(5) The liability of a contributory shall create a debt becoming due from him at the time when this liability commenced but payable at the time when a call is made for enforcing the liability.

(6) In this section, "shareholder" includes a member of a company limited by guarantee or a company without a share capital.

126. Death or bankruptcy of contributory

(1) Where a contributory dies, before or after he has been placed on the list of contributories, every heir who has taken possession of his estate shall be liable to contribute to the assets of the company in discharge of his liability and shall accordingly be a contributory to the extent of the inheritance or legacy received by him.

(2) Nothing in subsection (1) shall affect the right of any heir to renounce the estate of a deceased contributory or to accept it under benefit of inventory.

(3) Where a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, before or after he has been placed on the list of contributories—

(a) the trustee in bankruptcy or his assignee shall represent him for all the purposes of the winding up and shall accordingly be a contributory; and

(b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

127. Payment of debt due by contributory

(1) The Court may make an order directing a contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract other than money due to him as a shareholder or member in respect of any dividend or profit;

(b) in the case of a limited company, make a similar allowance to a director whose liability is unlimited or to his heir; and

(c) in the case of any company, when all the creditors are paid in full, allow a contributory by way of set-off against any subsequent call any money due on any account whatever to a contributory from the company.

(2) The Court may, before or after it has ascertained the sufficiency of the assets of the company—

(a) make a call on any contributory for the time being on the list of contributories, to the extent of his liability, for—

(i) the payment of any money which the Court considers necessary to satisfy the debts and liability of the company and the costs, charges and expenses of winding up; and

(ii) the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any call so made, and, in making a call, the Court may have regard to the probability that some of the contributories may partly or wholly fail to pay the call.

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

(4) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that any money thereby appearing to be due or ordered to be paid is due, and that any other relevant fact therein stated is true and correctly stated.

128. Special manager

(1) Where a liquidator is satisfied that the nature of the assets or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager other than himself, he may apply to the Court which may appoint a special manager to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court; and

(c) may at any time resign after giving not less than one month's written notice to the liquidator of his intention to resign, or on cause shown, be removed by the Court.

129. Receiver for debenture holders or creditors

Where an application is made to the Court to appoint a receiver on behalf of debenture holders or other creditors of a company which is being wound up by the Court, the Court may grant the application on such terms as the Court thinks appropriate and Sub-part III, to the extent that it is applicable, shall apply.

130. Creditors' claims

The Court may fix a date on or before which creditors are to prove their debts or claims in accordance with Sub-part II of Part IV, after which date they will be excluded from the benefit of any distribution made before those debts are proved.

131. Power of arrest

Where it has reasonable ground to believe that a contributory or a director or former director of the company is about to leave Mauritius or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of a call or avoiding examination respecting the affairs of the company, the Court may, at any time after the presentation of a petition for the winding up and before the making of a winding up order, cause the contributory, director or former director to be arrested and his books and other movable property to be seized.

132. Foreign companies

(1) Subject to Part V, a liquidator may be appointed for a foreign company under Part XXII of the Companies Act by the Court on the application of—

(a) a liquidator appointed in the country of the company's incorporation;

(b) a creditor; or

(c) the Director,

and thereupon section 286 (3), (5) or (7) of the Companies Act shall apply.

(2) Where a report has been made by an inspector under Part XV of the Companies Act in respect of a foreign company, the Director may apply to the Court for an order for the winding up of the affairs of the company insofar as they relate to its assets in Mauritius.

(3) Where on an application under subsection (1) or (2) an order is made for the affairs of the company so far as assets in Mauritius are concerned to be wound up, the company shall not carry on business or establish or keep a place of business in Mauritius.

(4) In the case of a foreign company that is—

(a) a deposit taking business under the Banking Act;

(b) a mutual fund company; or

(c) a life insurance company under the Insurance Act,

the Court, when appointing a liquidator for Mauritius under subsection (1), shall, after providing for all interested parties to have the opportunity of being heard, determine whether the assets of the company in Mauritius should be segregated in order to first effect payment rateably of the debts of the company in Mauritius and the amounts payable to depositors, investors in the mutual fund company and life insurance beneficiaries, in priority to any payment being made in relation to debts and liabilities to other parties outside Mauritius.

133. Pooling of assets of related companies

(1) On the application of a liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that—

(a) a company that is, or has been, related to a company in liquidation shall pay to the liquidator any claim made in the liquidation; or

(b) where two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent that the Court so orders and subject to such terms as the Court may impose.

(2) The Court may make such other order or give such directions to facilitate giving effect to an order under subsection (1) as it thinks appropriate.

134. Guidelines for orders

(1) In deciding whether it is just and equitable to make an order under section 133 (1) (a), the Court shall have regard to the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company.

(2) In deciding whether it is just and equitable to make an order under section 133 (1) (b), the Court shall have regard to—

(a) the extent to which any of the companies took part in the management of any of the other companies;

(b) the conduct of any of the companies towards the creditors of any of the other companies;

(c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies; and

(d) the extent to which the business of the companies have been combined.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under section 133.

135. Duty to identify and deliver property

A present or former director or employee of a company in liquidation shall—

(a) forthwith after the company is put into liquidation give the liquidator details of property of the company in his possession or under his control; and

(b) on being required to do so by the liquidator forthwith or within such time as may be specified by the liquidator, deliver the property to the liquidator or such other person as the liquidator may direct, or dispose of the property in such manner as the liquidator may direct.

136. Refusal to supply essential service

(1) For the purposes of this section—

"essential service" means—

(a) the retail supply of electricity;

(b) the supply of water; or

(c) telecommunications services;

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

(2) Notwithstanding any other enactment, a supplier of an essential service shall not—

(a) refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or

(b) make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation.

(3) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 1 (1) (a) of the Fourth Schedule.

Section C – Voluntary winding up

137. Circumstances for voluntary winding up

(1) Subject to subsection (2), a company may be wound up voluntarily where—

(a) the period, if any, fixed for its duration by its constitution expires, or the event, if any, occurs, on the occurrence of which

the constitution provides that the company is to be dissolved, and the company passes an ordinary resolution that it shall be wound up; or

(b) the company passes a special resolution that it shall be wound up.

(2) Where an application for winding up has been presented on the ground that a company is unable to pay its debts, the company shall not, without the leave of the Court, resolve that it be wound up voluntarily.

(3) A company shall—

(a) within 7 days, lodge with the Director a copy of the winding up resolution; and

(b) within 10 days, give notice of the winding up resolution in one daily newspaper and in the Gazette.

(4) Where it appears to the directors of a company that the company is insolvent, the directors may, before holding a meeting for the passing of the special resolution referred to in subsection (1)—

(a) lodge with the Director a declaration and deliver a copy thereof to the Official Receiver, stating that—

(i) the company cannot by reason of its liabilities continue its business; and

(ii) meetings of the company and of its creditors have been summoned for a date not later than one month of the date of the declaration; and

(b) appoint a person to be the provisional liquidator who shall, subject to such limitations and restrictions as may be prescribed, have and may exercise all the functions and powers of a liquidator in a creditors' winding up.

(5) The appointment of a provisional liquidator shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow or until the appointment of a liquidator, whichever occurs first.

(6) The company shall, within 14 days, give notice of the appointment of a provisional liquidator and the lodging of the declaration in one daily newspaper and in the Gazette.

(7) A provisional liquidator shall be entitled to receive remuneration.

(8) A voluntary winding up shall commence—

(a) where a provisional liquidator is appointed under subsection (4) before a winding up resolution is passed, at the time when a declaration under subsection (4) is lodged; and

(b) in every other case, at the time of the passing of the winding up resolution.

138. Effect of voluntary winding up

(1) A company shall, from the commencement of its winding up, cease to carry on its business, except so far as is, in the opinion of the liquidator, required for the beneficial winding up of the company.

(2) The corporate status and corporate powers of the company shall, notwithstanding anything in the constitution, continue until it is dissolved.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the shareholders made after the commencement of the winding up shall be void.

139. Declaration of solvency

(1) Where it is proposed to wind up a company voluntarily as a shareholders' voluntary winding up, the directors or, in the case of a company having more than 2 directors, the majority of the directors shall, before the date on which the notices of the meeting at which the winding up resolution is to be proposed are sent out, make a written declaration to the effect that—

(a) they have made an inquiry into the affairs of the company; and

(b) at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) There shall be attached to the declaration under subsection (1) a statement of the affairs of the company, showing—

(a) the assets of the company and the total amount expected to be realised therefrom;

(b) the liabilities of the company; and

(c) the estimated expenses of winding up, made up to the latest practicable date before the making of the declaration.

(3) A declaration made under subsection (1) shall have no effect unless it is—

(a) made at the meeting of directors referred to in subsection (1); or

(b) made within the 28 days immediately preceding the passing of the winding up resolution; and

(c) lodged with the Director before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

(4) A winding up resolution referred to in subsection (1) may be passed in the manner provided for under section 117 of the Companies Act.

[S. 139 amended by s. 11 (e) of Act 4 of 2017 w.e.f. 20 May 2017.]

140. Liquidator in shareholders' winding up

(1) The company shall, at a general meeting, appoint a liquidator for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator or, with his consent, the company in general meeting may otherwise determine.

(3) (a) Subject to subsection (3) (b), the company in a general meeting convened by a contributory may, by special resolution of which special notice has been given to the creditors and the liquidator, remove a liquidator.

(b) A resolution under subsection (3) (a) shall have no effect if, on the application of the liquidator or a creditor, the Court otherwise directs.

(4) (a) Where a vacancy occurs, by death, resignation, removal or otherwise, in the office of a liquidator the company in a general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by a contributory, or, if there were more liquidators than one, by the continuing liquidators.

(b) A general meeting under this subsection shall be held in the manner provided by the Fifth Schedule to the Companies Act or by the company's constitution in such manner as, on the application of a contributory or the continuing liquidators, the Court may direct.

(c) Where a company in a general meeting has failed to fill a vacancy under subsection (4) (a), any creditor or contributory of the company may apply to the Court for the appointment of the Official Receiver as provisional liquidator of the company and, if appointed by the Court, the Official Receiver shall act as provisional liquidator of the company until further order of the Court made on application by the company following a resolution in a general meeting nominating a liquidator for appointment by the Court.

141. Insolvency of company

(1) (a) Where a liquidator is of opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration of solvency made under section 139, he shall forthwith—

(i) summon a meeting of the creditors; and

(ii) lay before the meeting a statement of the assets and liabilities of the company.

(b) The notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may at the meeting appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) Where the creditors appoint some other person under subsection (2), the winding up shall proceed as if the winding up were a creditors' winding up.

(4) The liquidator or, if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall, within 7 days, lodge a notice of the holding of the meeting with the Director and deliver a copy to the Official Receiver.

(5) (a) Where, at a meeting summoned under subsection (1), the creditors do not appoint another liquidator, the winding up shall proceed as if the winding up were a creditors' voluntary winding up.

(b) The liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting was held less than 3 months before the end of that year.

142. Creditors' meeting

(1) Where no declaration of solvency is made under section 139, the voluntary winding up shall be a creditor's voluntary winding up.

(2) The directors shall cause—

(a) a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which a winding up resolution is to be proposed;

(b) the notice of the meeting of creditors to be sent by post to the creditors at the same time as the notice of the meeting of the company are sent; and

(c) a copy of the notice of the meeting of creditors to be delivered forthwith to the Director.

(3) The directors shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

(a) give the creditors at least 7 days' notice of the meeting; and

(b) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(4) The directors shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in one daily newspaper.

(5) The directors shall—

(a) cause a full statement of the company's affairs showing, in respect of assets, the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors;

(aa) cause a copy of the full statement of the company's affairs made under paragraph (a) to be lodged forthwith with the Director; and

(b) appoint one of their number to attend the meeting.

(6) The director so appointed shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(7) The creditors may appoint one of their number or the director appointed under subsection (5) to preside at the meeting.

(8) The chairperson shall, at the meeting, determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(9) Where the chairperson decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(10) The provisions of the First Schedule shall apply to that meeting so far as they are applicable and consistent with this section.

[S. 142 amended by s. 11 (f) of Act 4 of 2017 w.e.f. 20 May 2017.]

143. Liquidator in creditors' winding up

(1) The creditors may nominate a person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the directors nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors, the person nominated by the directors shall be the liquidator.

(2) Where different persons are nominated, any director, shareholder or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the directors shall be the liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection or, if there is no such committee, the creditors approve the continuance thereof.

(5) Where a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing, a meeting of the creditors may be summoned by any 2 of their number.

144. Committee of inspection in voluntary winding up

(1) (a) The creditors may, at a meeting summoned pursuant to section 142 or 143 or at any subsequent meeting, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not.

(b) Where a committee of inspection is appointed, the directors may, either at the meeting at which the winding up resolution is passed or at any time subsequently in a general meeting, appoint such number of persons not being more than 5 as it thinks fit to act as members of the committee.

(2) The creditors may, if they think fit, resolve that all or any of the persons so appointed by the directors ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under the subsection the Court may if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) A committee appointed under this section shall meet at least once in every year.

(4) The Seventh Schedule shall apply to a committee of inspection appointed under this section.

145. Property and proceedings

(1) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of a creditors' winding up shall be void.

(2) No action or proceeding shall, after the commencement of a winding up, be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court thinks appropriate.

146. Distribution of property

Subject to sections 336 and 337 and the Fourth Schedule, the property of a company shall, on its winding up—

(a) be applied pari passu in satisfaction of its liabilities; and

(b) unless the constitution otherwise provides, be distributed among the shareholders according to their rights and interests in the company.

147. Appointment and removal of liquidator

(1) Where there is no liquidator acting in a voluntary winding up, the Court may appoint a liquidator.

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

(3) A shareholder or creditor or the liquidator may, at any time before the dissolution of a company, apply to the Court to review the amount of the liquidator's remuneration.

(4) The acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

(5) Any assignment, transfer, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be valid in favour of any person taking the property bona fide and for value and without notice of the defect or irregularity.

(6) Any person who makes or permits a disposition of property to a liquidator shall not incur any liability and shall be indemnified out of the property of the company notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

148. Powers and duties of liquidator in voluntary winding up

(1) A liquidator may—

(a) exercise any of the powers given by paragraphs (d), (e) and (f) of the Sixth Schedule to a liquidator in a winding up by the Court—

(i) in the case of a shareholders' voluntary winding up, with the approval of a special resolution of the company; and

(ii) in the case of a creditor's voluntary winding up, with the approval of the Court or the committee of inspection;

(b) exercise any other power given by this Act to a liquidator in a winding up by the Court;

(c) exercise the power of the Court of settling a list of contributories, and the list of the contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories and sections 125 to 127 shall apply to the liability of contributories;

(d) exercise the power of the Court under section 127 (2) of making calls; or

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks appropriate.

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

(3) Where several liquidators are appointed, any power may be exercised by a liquidator designated at the time of their appointment, or in default of such determination, by any number not less than 2.

149. Sale of company's property

(1) Subject to subsection (5), where it is proposed that the business or property of a company be transferred to another corporation, the liquidator may, with the sanction of a special resolution conferring on him a general authority or an authority in respect of a particular arrangement—

(a) receive in compensation or part compensation for the transfer of cash, shares, debentures, policies or other like interests in the corporation for distribution among the members; or

(b) enter into any other arrangement whereby the members may, in lieu of, or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of or receive any other benefit from the corporation,

and any such transfer or arrangement shall be binding on the shareholders.

(2) Where a shareholder, within 7 days, by written notice addressed to the liquidator and left at his office, dissents from the resolution, he may require the liquidator to—

(a) abstain from carrying the resolution into effect; or

(b) purchase his interest at a price to be determined by agreement or by the Court.

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

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before, or concurrently with, a winding up resolution or a resolution appointing a liquidator, but if an order for winding up the company by the Court is made within one year after the passing of the resolution, it shall not be valid unless sanctioned by the Court.

(5) Subsection (1) shall not apply in the case of a creditors' winding up except with the approval of the Court or the committee of inspection.

150. Annual meeting of shareholders and creditors

(1) Where a voluntary winding up continues for more than one year, the liquidator shall, at the expiry of the first year from the commencement of the winding up and of each succeeding year but not more than 3 months later, summon a general meeting of the company or in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent at the same time as the notices of the meeting of the company are sent.

151. Final meeting and dissolution in voluntary winding up

(1) Where the affairs of the company have been fully wound up, the liquidator shall as soon as possible—

(a) make up an account showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company, or in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, and shall lay the account before the meeting.

(2) A meeting under subsection (1) shall be called by advertisement published in at least one daily newspaper which shall—

(a) specify the time, place and object of the meeting; and

(b) be published at least one month before the meeting.

(3) The liquidator shall within 7 days lodge a notice of the holding of the meeting and of its date together with a copy of the account with the Director, and deliver a copy of the notice to the Official Receiver.

(4) (a) Subject to subsection (4A), the quorum at a meeting of the company shall be 2.

(b) The quorum at a meeting of the company and creditors shall be 2 shareholders and 2 creditors.

(c) Where there is no quorum under this section at a meeting, the liquidator shall not lodge the notice specified in subsection (3) but shall instead lodge, a notice that the meeting was summoned and that no quorum was present together with a copy of the account.

(4A) Where the company has only one shareholder, that shareholder shall constitute a quorum.

(5) Subject to subsection (6), the company shall be dissolved on the expiry of 3 months after the notice has been lodged and, if a quorum is reached, a copy of the notice has been delivered to the Official Receiver.

(6) The Court may, on the application of the liquidator or of such other person as the Court may determine, direct that the date at which the dissolution of the company is to take effect shall be deferred for such time as the Court may determine.

(7) The person on whose application an order of the Court under subsection (6) is made shall, within 14 days, lodge a copy of the order with the Director and deliver a copy to the Official Receiver.

[S. 151 amended by s. 24 (a) of Act 27 of 2013 w.e.f. 21 December 2013.]

152. Arrangement binding on creditors

(1) Any arrangement entered into between a company about to be or in the course of being wound up voluntarily and its creditors shall, subject to subsection (4), be binding—

(a) on the company if sanctioned by a special resolution; and

(b) on the creditors if acceded to by—

(i) three-fourths in value of the creditors; and

(ii) one-half of the number of persons who are creditors for 5,000 rupees or more.

(2) A creditor shall be accounted a creditor for such sum as appears to be the balance due to him upon an account fairly stated, after allowing the value of security or *liens* held by him and the amount of any debt or set-off owing by him to the debtor.

(3) Any dispute with regard to the value of any security or *lien* or the amount of a debt or set-off may, on the application of the company, the liquidator or the creditor, be settled by the Court.

(4) A creditor or contributory may, within 21 days from the completion of the arrangement, appeal to the Court against it, and the Court may amend, vary or confirm the arrangement.

153. Costs

All proper costs, charges and expenses of and incidental to a voluntary winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Section D – Provisions applicable to every winding up

154. Effect of liquidation

(1) With effect from the commencement of the liquidation of a company—

(a) the liquidator has custody and control of the company's assets;

(b) the directors remain in office but cease to have powers, functions or duties other than those required or permitted to be exercised by this Part;

(c) unless the liquidator agrees or the Court orders otherwise, a person shall not—

(i) commence or continue legal proceedings against the company or in relation to its property; or

(ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;

(d) unless the Court orders otherwise, a share in the company shall not be transferred;

(e) an alteration shall not be made to the rights or liabilities of a shareholder of the company;

(f) a shareholder shall not exercise a power under the constitution of the company or this Act except for the purposes of this Part; and

(g) the constitution of the company shall not be altered.

(2) Subsection (1) shall not affect the right of a secured creditor, subject to the Fourth Schedule, to take possession of and realise, or otherwise deal with, the property of the company over which that creditor has a charge.

155. Application to Court

(1) Any person aggrieved by any act or decision of the liquidator may appeal to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it may determine.

(2) A liquidator, contributory or creditor may apply to the Court to—

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

(b) exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(3) (a) Where, in the course of the winding up of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, administrator or receiver of the company, has misapplied or retained or become liable or accountable for money or property of the company, or been guilty of negligence, default or breach of duty or trust in relation to the company, the Court may, on the application of the liquidator or a creditor or shareholder or the Director—

(i) inquire into the conduct of the promoter, director, manager, liquidator, administrator or receiver; and

(ii) order that person—

(A) to repay or restore the money or property or any part of it with interest at a rate the Court may determine;

(B) to contribute such sum to the assets of the company by way of compensation as the Court may determine; or

(C) where the application is made by a creditor, to pay or transfer the money or property or any part of it with interest at a rate the Court may determine to the creditor.

(b) An order for payment of money under paragraph (a) shall be deemed to be a final judgment within the meaning of section 8.

(4) Where the Court is satisfied that the determination of the question or the exercise of the power will be just and beneficial, it may accede wholly or partially to an application under subsection (2), or make such other order on such terms as it may determine.

156. Powers of Official Receiver

(1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

157. Notice of appointment and address of liquidator

Every liquidator shall, within 14 days—

(a) lodge a notice of his appointment and of the situation of his office under section 117 with the Director;

(b) in the event of any change in the situation of his office, lodge with the Director a notice to that effect;

(c) where he resigns or is removed from office, lodge with the Director a notice to that effect; and

(d) deliver to the Registrar and the Official Receiver a copy of every such notice.

158. Payment into bank by liquidator

(1) Subject to any order which the Court may make, every liquidator shall pay all money received by him into a bank account.

(2) Where a liquidator retains for more than 10 days a sum exceeding 20,000 rupees, or such other amount as the Court in any particular case authorises him to retain, he shall, unless he explains the retention to the satisfaction of the Court, pay interest on the amount so retained in excess with effect from the day following the expiry of the 10 days until he has complied with subsection (1), at the prevailing Repo rate determined by the Bank of Mauritius and be liable—

(a) to disallowance of all or such part of his remuneration as the Court may determine;

(b) to be removed from his office by the Court; and

(c) to pay any expenses occasioned by reason of his default.

(3) A liquidator shall not pay any sum derived by him as liquidator into his private bank account.

[S. 158 amended by s. 24 (b) of Act 27 of 2013 w.e.f. 21 December 2013.]

159. Liquidator's accounts

(1) Every liquidator shall—

(a) within 28 days after the expiry of the period of 6 months from the date of his appointment and of every subsequent period of 6 months;

(b) within 28 days after he ceases to act as liquidator; and

(c) forthwith after obtaining an order of release,

lodge with the Director an affidavit giving an account of his receipts and payments and stating the steps taken in the winding up, and deliver a copy of the affidavit to the Official Receiver and the Registrar.

(2) (a) The Director may cause the account to be audited by a qualified auditor.

(b) The liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any book kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and a copy shall be open to the inspection of any person on request at the office of the liquidator.

(4) Where an account has been made up under subsection (1), the liquidator shall, when he forwards any report, notice of meeting, notice of call or dividend to a creditor or contributory—

(a) include a written notice to that effect; and

(b) inform the creditors or contributories of the place where a copy of the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Director and be part of the expenses of the winding up.

(6) In this section—

"liquidator" means a person, other than the Official Receiver, who is appointed as liquidator.

[S. 159 amended by s. 11 (g) of Act 4 of 2017 w.e.f. 20 May 2017.]

160. Default by liquidator

(1) Where a liquidator who has made default in lodging or making any application, return, account or other document or in giving any notice which he is required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice issued by the Registrar of Companies or the Official Receiver or the Director requiring him to do so, the Court may, on the application of a contributory or creditor of the company or the Official Receiver or the Registrar of Companies or the Director, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) An order under subsection (1) may provide that all costs of, and incidental to, the application shall be borne by the liquidator.

(3) In this section—

"liquidator" means a person, other than the Official Receiver, who is appointed as liquidator.

[S. 160 amended by s. 11 (h) of Act 4 of 2017 w.e.f. 20 May 2017.]

161. Notification of liquidation

Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears shall have the words "in liquidation" added after the name of the company where it first appears.

162. Books of company

(1) Every book of a company and of a liquidator that is relevant to the affairs of the company at or subsequent to the commencement of a winding up shall, as between the contributories, be prima facie evidence of the truth of all matters purporting to be recorded therein.

(2) Subject to subsection (3), where a company has been wound up, the liquidator shall retain every book referred to in subsection (1) for a period of 6 years from the date of the dissolution of the company, and a creditor or contributory may, unless the Court directs otherwise on the application of the liquidator, inspect such books.

(3) (a) Where a company has been wound up by the Court, every book referred to in subsection (1) may be destroyed in accordance with the directions of the Court.

(b) Where a company has been wound up voluntarily, every book referred to in subsection (1) may be destroyed at such time after a period of 3 years from the date of the dissolution of the company as, in the case of—

(i) a shareholder's voluntary winding up, the company may, by ordinary resolution, direct; or

(ii) a creditor's voluntary winding up, the committee of inspection, or, if there is no committee, the creditors of the company may direct.

(4) Subject to subsection (5), where—

(a) a company that is in liquidation and is unable to pay all its debts has, during the period of 5 years preceding the winding up of the company, failed to comply with section 212, 213 or 340 of the Companies Act; and

(b) the Court considers that—

(i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly winding up of the company; or

(ii) for any other reason, it is proper to make a declaration under this subsection,

the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company shall be personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.

(5) The Court shall not make a declaration under subsection (4) in relation to a person where the Court considers that the person—

(a) took all reasonable steps to secure compliance by the company with the applicable provision referred to in subsection (4) (a); or

(b) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

(6) A declaration under subsection (4) shall be a final judgment within the meaning of section 8.

[S. 162 amended by s. 24 (c) of Act 27 of 2013 w.e.f. 21 December 2013.]

163. Investment of surplus funds

(1) Where the cash balance standing to the credit of a company which is being wound up exceeds the amount which, in the opinion of the committee of inspection or, if there is no committee, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator may, subject to any written direction of the committee of inspection, if any, and unless the Court on application by a creditor otherwise directs, invest the sum in Government securities or place it on deposit at interest with a bank, and any interest received in that respect shall form part of the assets of the company.

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(2) Where any money so invested, in the opinion of the committee of inspection, or, if there is no committee of inspection, in the opinion of the liquidator, is required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of that part of the securities as is necessary.

164. Unclaimed assets

(1) Subject to section 66 of the Insurance Act, where a liquidator has in his possession, custody or control—

(a) any unclaimed dividend or other money which has remained unclaimed for more than 6 months from the date when the dividend or other money became payable; or

(b) after making a final distribution, any unclaimed or undistributed money arising from the property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of a Companies Liquidation Account and, on such payment, he shall be entitled to a certificate issued by the Official Receiver which shall be an effectual discharge to him in that behalf.

(2) The Court may, on the application of the Official Receiver—

(a) order a liquidator to submit an affidavit of the account of any unclaimed or undistributed dividend or other money in his possession, control or custody;

(b) direct an audit of the account; or

(c) direct the liquidator to pay the money to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) Except where it is otherwise prescribed, the Court may for the purposes of this section exercise all powers conferred by section 121 with respect to the discovery and realisation of the property of the company.

(4) Where a person makes a claim to any money placed to the credit of the Companies Liquidation Account, the Official Receiver shall, on being satisfied that the claimant is the owner of the money, authorise payment to be made to him accordingly out of the Companies Liquidation Account.

(5) Any person aggrieved by a decision of the Official Receiver in respect of a claim under subsection (4) may appeal to the Court which may confirm, reverse or modify the decision and make such order as it thinks fit.

(6) Where any money paid to a claimant is afterwards claimed by another person, that other person shall not be entitled to any payment out of the Companies Liquidation Account but may have recourse against the claimant to whom the money has been paid.

(7) Any unclaimed money paid to the credit of the Companies Liquidation Account to the extent to which the money has not under this section been paid out of the account shall, after the expiry of 7 years from the date of the payment of the moneys to the credit of the account, be paid into the Insolvency Surplus Account.

165. Expenses of winding up where assets insufficient

(1) A liquidator shall not, unless expressly directed to do so by the Official Receiver, be liable to incur any expenses in relation to the winding up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks fit.

166. Resolution at adjourned meeting of creditors and contributories

Subject to section 142 (9), where a resolution is passed at an adjourned meeting of creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

167. Meetings to ascertain wishes of creditors or contributories

(1) The Court may, in the winding up of a company, have regard to the wishes of the creditors or contributories and, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) For the purposes of subsection (1), regard shall be had—

(a) in the case of creditors, to the value of each creditor's debt;

(b) in the case of contributories, to the number of votes conferred on each contributory by this Act or the constitution of the company.

(3) A liquidator who calls a meeting of creditors or shareholders shall call such a meeting in accordance with the First Schedule or, if applicable, the Fifth Schedule to the Companies Act, as the case may be.

(4) Nothing in this section limits or prevents a liquidator from exercising his discretion in carrying out his functions and duties under this Act.

168. Completion of liquidation

The liquidation of a company is completed where the liquidator—

(a) in the case of a winding up by the Court, complies with section 122;

(b) in the case of a voluntary winding up, complies with section 151.

169. Court may terminate liquidation

(1) The Court may, at any time after the appointment of a liquidator, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company, or stay the liquidation for such time as the Court thinks fit.

(2) An application under this section may be made by the liquidator, a director or shareholder of the company, a creditor of the company or the Director or such other person as the Court may authorise.

(3) The Court may require the liquidator to furnish a report to the Court with respect to any facts or matters relevant to the application.

(4) The Court may, on making an order under subsection (1), or at any time thereafter, make such other order as it thinks fit in connection with the termination or staying of the liquidation.

(5) Where the Court makes an order under this section, the person who applied for the order shall, within 14 days after the order was made, submit a certified copy of the order to the Director for registration.

(6) Where the Court makes an order under subsection (1) terminating the liquidation, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or such other date as may be specified in the order.

(7) Where the Court makes an order under subsection (1) staying the liquidation for a period of time, the liquidator shall cease to conduct any further action on behalf of the company from the date named by the Court.

170. Right of creditor to complete execution, distraint or attachment

(1) Subject to subsection (3), a creditor is not entitled to retain the benefit of any execution process, distress or attachment over or against the property of a company unless the execution process, distress or attachment is completed before—

(a) the passing of a resolution under section 137 (1) (a) appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first;

(b) the passing of a resolution under section 137 (4) appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first;

(c) the making of an application to the Court under section 102 to appoint a liquidator of the company; or

(d) the passing of an ordinary resolution under section 137 (1) (a) that a company should be wound up, or the date on which the creditor had notice of the calling of the meeting at which such a resolution was proposed, whichever occurs first.

(2) Notwithstanding subsection (1)—

(a) a person who, in good faith, purchases property of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company; and

(b) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.

(3) The Court may order that subsection (1) shall not apply to such an extent and on such terms as the Court thinks appropriate.

(4) For the purposes of this section—

(a) an execution or distraint against movable property is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against immovable property is completed by sale.

(5) Nothing in this section shall affect section 313.

171. Duties of usher in execution process

(1) Subject to subsection (6), and notwithstanding the Sale of Immovable Property Act, where—

(a) property of a company is taken in an execution process; and

(b) before completion of the execution process, the usher charged with the execution process receives notice that a liquidator of the company has been appointed,

he shall, on being required by the liquidator to do so, give or transfer the property and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the property, as the case may be, to the liquidator.

(2) The costs of the execution process are a first charge on any property or money given or transferred to the liquidator under subsection (1) and the liquidator may sell all or some of the property to satisfy that charge.

(3) Subject to subsection (6), where—

(a) property of a company is sold in an execution process in respect of a judgment for a sum exceeding 10,000 rupees, or such other amount as may be prescribed; or

(b) money is paid to the usher charged with the execution process to avoid a sale of the property,

the usher shall retain the proceeds of sale or the money so paid for 28 days.

(4) Subject to subsection (6), where—

(a) within the period of 28 days, the usher has notice of—

(i) the calling of a meeting of the company at which a resolution to appoint a liquidator is proposed under section 137 (1) (a);

(ii) the calling of a meeting at which a resolution is proposed to appoint a liquidator pursuant to section 137 (1) (b);

(iii) the making of an application to the Court to appoint a liquidator pursuant to section 102; or

(iv) any step is taken for the winding up or dissolution of a limited life company under section 290 of the Companies Act; and

(b) the company is put into winding up,

the usher shall deduct from the amount the costs of the execution process and pay the balance to the liquidator.

(5) A liquidator to whom money is paid under subsection (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the application to such extent and on such terms as it thinks appropriate.

172. Consent to appointment and validity of act of liquidator

(1) The appointment of a person as liquidator, other than on the order of the Court, is of no effect unless that person has consented in writing to the appointment.

(2) The act of a person as a liquidator is valid even though that person is not qualified to act as a liquidator.

173. Vacancy in office of liquidator

(1) The office of liquidator becomes vacant where the person holding office resigns, dies or ceases to be qualified under section 109.

(2) A person, other than a person appointed by the Court, may resign from the office of liquidator by appointing another such person as his successor and submitting a notice of the appointment of his successor to the Director.

(3) With the approval of the Court, a person appointed as a liquidator by the Court may resign from the office of liquidator.

(4) The Court may, on the application of the company, or a shareholder or director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who is qualified for appointment under section 109 to be the liquidator of the company.

(5) Where, for any reason other than resignation, a vacancy occurs in the office of liquidator, notice of the vacancy shall be submitted to the Director within 7 days by the person vacating office or, where that person is unable to act, by his personal representative.

(6) Where, as the result of the vacation of office by a liquidator, other than a liquidator appointed by the Court, no person is acting as liquidator, the Director may appoint a person to act as liquidator until a successor is appointed under this section.

(7) Where a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under subsection (6), as the case may be, the Court may, on the application of the company, or a shareholder or director or creditor of the company, or the Director, appoint any person who is qualified for appointment as a liquidator under section 109 to be the liquidator of the company.

(8) A person vacating the office of liquidator shall, where practicable, provide such information and give such assistance to that person's successor as he reasonably requires in taking over the duties of liquidator.

174. Court supervision of liquidation

(1) The Court shall have regard to the conduct of every liquidator and, where a liquidator does not faithfully perform his duties and observe the requirements of the Court or where there is a failure to comply with a relevant duty, or where a complaint is made in that behalf to the Court by a creditor, contributory or committee of inspection, or by the Official Receiver or Registrar of Companies or the Director, the Court shall inquire into the matter and make such order as it thinks fit.

(2) The Registrar of Companies, the Director or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained and make such other order it thinks fit.

(3) On the application of the liquidator, the committee of inspection, the Director, the Registrar of Companies, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—

(a) give directions in relation to any matter arising in connection with the liquidation;

(b) confirm, reverse or modify an act or decision of the liquidator;

(c) order an audit of the accounts of the liquidation;

(d) order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests;

(e) in respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances;

(f) to the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount;

(g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property; and

(h) make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

(4) The powers given by subsection (3) are in addition to any other powers the Court may exercise in its jurisdiction relating to liquidators, and may be exercised in relation to a matter occurring before or after the commencement of the liquidation, or the removal of the company from the register, and whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

(5) Subject to subsection (6), a liquidator who has—

(a) obtained a direction of the Court with respect to a matter connected with the exercise of the powers or functions of liquidator; and

(b) acted in accordance with the direction,

is entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction.

(6) The Court may, on the application of any person, order that, by reason of the circumstances in which a direction was obtained under subsection (1), the liquidator does not have the protection given by subsection (3).

175. Order to enforce or relieve liquidator from compliance

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

(a) a liquidator;

(b) a person seeking appointment as a liquidator;

(c) a committee of inspection;

(d) a creditor, shareholder, other entitled person, or a director of the company in liquidation;

(e) a receiver appointed in relation to property of the company in liquidation;

(f) the Registrar of Companies; or

(g) the Director.

(2) No application may be made to the Court by a person other than a liquidator in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than 5 days before the

date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, a failure to comply, the Court may—

(a) relieve the liquidator of the duty to comply wholly or in part; or

(b) without prejudice to any other remedy which may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

(4) The Court may, in relation to a person who fails to comply with an order made under subsection (3), or is or becomes disqualified under section 109 to become or remain a liquidator—

(a) remove the liquidator from office; or

(b) order that the person may be appointed and act, or may continue to act, as liquidator, notwithstanding section 109.

176. Prohibition order

(1) Where it is shown to the satisfaction of the Court that a person is unfit to act as liquidator by reason of—

(a) persistent failures to comply;

(b) the seriousness of a failure to comply; or

(c) misconduct or serious incompetence on the part of that person,

the Court shall make, in relation to that person, a prohibition order for a period not exceeding 5 years.

(2) A person to whom a prohibition order applies shall not act as an Insolvency Practitioner and, if currently acting, shall be removed from office.

(3) Evidence that, on 2 or more occasions within the preceding 5 years—

(a) the Court has made an order to comply in respect of the same person; or

(b) an application for an order to comply has been made in respect of the same person and in each case the person has complied after the making of the application and before the hearing,

is, in the absence of special reasons to the contrary, evidence of persistent failure for the purposes of subsection (1).

(4) In making an order under this section, the Court may, if it thinks fit—

(a) make an order extending the time for compliance;

(b) impose a term or condition; or

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

(5) A copy of every order made under subsection (1) shall, within one month of the order being made, be given by the applicant to the Director who shall keep it on a register indexed by reference to the name of the liquidator concerned.

177. Meaning of "failure to comply"

In sections 174, 175 and 176, "failure to comply" means a failure of a liquidator to comply with a relevant duty arising—

(a) under this or any other Act or from an order of a competent Court; or

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

178. Meaning of "inability to pay debts"

Unless the contrary is proved, and subject to section 179, a company is presumed to be unable to pay its debts as they become due in the ordinary course of business where—

(a) the company has failed to comply with a statutory demand;

(b) execution issued against the company in respect of a judgment debt has been returned unsatisfied;

(c) a person entitled to a charge over all or substantially all of the property of the company has appointed a receiver under the instrument creating the charge; or

(d) a compromise between a company and its creditors has been put to a vote in accordance with Part XVII and Part XVIII of the Companies Act but has not been approved.

179. Evidence of inability

(1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand shall not be admissible as evidence that a company is unable to pay its debts as they become due in the ordinary course of business unless the application is made within one month after the last date for compliance with the demand.

(2) Section 177 shall not prevent proof by other means that a company is unable to pay its debts as they become due in the ordinary course of business.

(3) In determining whether a company is unable to pay its debts as they become due in the ordinary course of business, its contingent or prospective liabilities may be taken into account.

(4) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts as they become due in the ordinary course of business may be made by a contingent or prospective creditor only with the leave of the Court, and the Court may give such leave, with or without conditions, only if it is satisfied that a *prima facie* case has been made out that the company is unable to pay its debts as they become due in the ordinary course of business.

180. Statutory demand

A statutory demand shall—

(a) be in respect of a debt that is due and is not less than 100,000 rupees or such other amount as may be prescribed;

(b) be in the prescribed form;

(c) be served on the company; and

(d) require the company to pay the debt, or enter into a compromise under Part XVII or Part XVIII of the Companies Act, or otherwise compound with the creditor, or give a charge over its property to secure payment of the debt, to the reasonable satisfaction of the creditor, within one month of the date of service, or such longer period as the Court may order.

181. Court may set aside statutory demand

(1) The Court may, on the application of the company, set aside a statutory demand.

(2) The application shall be made, and served on the creditor, within 14 days of the date of service of the demand.

(3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but, at the hearing of the application, the Court may extend the time for compliance with the statutory demand.

(4) The Court may grant an application to set aside a statutory demand where it is satisfied that—

(a) there is a substantial dispute whether or not the debt is owing or is due;

(b) the company appears to have a counterclaim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross-demand is less than the prescribed amount; or

(c) the demand ought to be set aside on other grounds.

(5) (a) A statutory demand shall not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.

(b) In paragraph (a), "defect" includes an immaterial misstatement of the amount due to the creditor and an immaterial misdescription of the debt referred to in the demand.

(6) (a) Where, on the hearing of an application under this section, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of substantial dispute, or is not subject to a counterclaim, set-off or cross-demand, the Court may—

(i) order the company to pay the debt within a specified period and that, in default of payment, the creditor may make an application to put the company into liquidation; or

(ii) dismiss the application and forthwith make an order under section 102 putting the company into liquidation, on the ground that the company is unable to pay its debts as they become due in the ordinary course of business.

(b) For the purposes of the hearing of an application to put the company into liquidation pursuant to an order made under subsection (6) (a), the company is presumed to be unable to pay its debts as they become due in the ordinary course of business where it failed to pay the debt within the specified period.

(7) An order under this section may be made subject to conditions.

Sub-Part III – Receivers and Managers

182. Interpretation of Sub-Part III

In this Sub-part—

"chargee" means the person entitled to the benefit of an instrument;

"chargor" means a company in respect of whose property a receiver is or may be appointed;

"creditor" includes a person to whom the chargor owes a debt or is under a liability, whether present or future, certain or contingent, and whether an ascertained debt or liability or a liability in damages;

"failure to comply", in relation to a receiver, means a failure by the receiver to comply with a relevant duty arising—

(a) under the instrument or the order of the Court by or under which the receiver was appointed;

(b) under this or any other enactment, rule of law or Rule of Court; or

(c) under any other order or direction of the Court;

"manager" means a person appointed under this Sub-part to carry on a company's business and dispose of its undertaking;

"mortgage" includes a charge on property for securing money or money's worth;

"mortgagee"—

(a) includes a person from time to time deriving title under the original mortgage; but

(b) does not include a receiver;

"mortgagee in possession" means a mortgagee who personally or as or through an agent exercises a power to—

(a) receive income from mortgaged property;

(b) enter into possession or assume control of mortgaged property; or

(c) sell or otherwise alienate mortgaged property;

"preferential claim" means a claim which is a preferential debt in accordance with the Fourth Schedule except for the payment of the fees and expenses properly incurred by the liquidator in carrying out his functions and duties;

"property" includes—

(a) an interest or right in property; and

(b) a debt;

"receiver" means a person appointed in terms of section 183 to take possession and control of the property in receivership and deal with it as directed in the instrument of appointment, and unless otherwise stated, covers a person appointed as a receiver and manager.

183. Appointment of receiver

(1) A receiver—

(a) may be appointed—

(i) under any instrument that confers on a chargee the power to appoint a receiver; or

(ii) by the Court,

whether or not the person appointed is empowered to sell any of the property in receivership, but

(b) does not include a mortgagee in possession who personally or as or through an agent exercises a power to—

(i) receive income from mortgaged property;

(ii) enter into possession or assume control of mortgaged property; or

(iii) sell or otherwise alienate mortgaged property.

(2) An instrument that creates a charge in respect of property and undertaking of a company may confer on the chargee the power to appoint a receiver or a receiver and manager of the property and undertaking or of that part which is secured by the charge.

184. Qualifications of receiver

(1) Unless the Court orders otherwise, no person may be appointed as a receiver who—

(a) is not qualified to be a liquidator;

(b) is a creditor of the chargor;

(c) is or has within the period of 2 years immediately preceding the commencement of the receivership been a director, officer or auditor of the chargee of the property in receivership or of any corporation which is a related company of the chargee;

(d) has or has within the period of 2 years immediately preceding the commencement of the receivership had an interest, direct or indirect, in a share issued by the chargor;

(e) is a person in respect of whom an order for his removal as a liquidator has been made or is prohibited from acting as a liquidator;

(f) is a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver; or

(g) is not qualified to be appointed to be an Insolvency Practitioner.

(2) A body corporate shall not be appointed or act as a receiver.

185. Appointment of receiver under instrument

(1) Where an instrument confers on the chargee the power to appoint a receiver or a receiver and manager, the chargee may appoint a receiver or a receiver and manager by an instrument in writing signed by him or on his behalf.

(2) A receiver or a receiver and manager appointed by, or under a power conferred by, an instrument, shall be the agent of the chargor, unless the instrument expressly provides otherwise.

(3) A receiver or a receiver and manager may be appointed under this section—

(a) notwithstanding any other enactment; and

(b) whether or not the property in respect of which the receiver or receiver and manager is appointed includes immovable property.

(4) A person appointed a receiver may act as receiver and manager unless the instrument appointing him excludes appointment as manager.

(5) A power conferred by an instrument to appoint a receiver includes, unless the instrument expressly provides otherwise, the power to appoint—

(a) 2 or more receivers;

(b) a receiver additional to a receiver in office; and

(c) a receiver to succeed a receiver whose office has become vacant.

186. Appointment of receiver by Court

(1) The Court may appoint a receiver or a receiver and manager on the application of a chargee or of any other interested person and on notice to the company, where the Court is satisfied that—

(a) the company has failed to pay a debt due to the chargee or has otherwise failed to meet any obligation to the chargee, or that any principal money borrowed by the company or interest is in arrears for more than 21 days;

(b) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security or charge; or

(c) it is necessary to do so to ensure the preservation of the secured property for the benefit of the chargee.

(2) A receiver or receiver and manager may be appointed under this section—

(a) notwithstanding any other enactment; and

(b) whether or not the property in respect of which the receiver is appointed includes immovable property.

(3) A person appointed by the Court as a receiver shall be appointed receiver and manager unless the Court directs that the person is to be appointed only as a receiver.

(4) In the case of a floating charge, where the application for the appointment of a receiver is brought by the chargee, the application may be accompanied by a notice for the crystallisation of the charge under article 2202-40 of the Code Civil Mauricien and the Court, when determining whether a receiver shall be appointed, shall also hear any objection raised by the company to the crystallisation of the charge and determine whether the crystallisation of the charge should be set aside.

187. Notice of appointment of receiver

(1) A receiver shall, within 7 days after being appointed—

(a) give written notice of his appointment to the chargor;

(b) give public notice of his appointment, including—

(i) the receiver's full name;

(ii) the date and time of the appointment;

(iii) the receiver's office address; and

(iv) a brief description of the property in receivership; and

(c) send a copy of the notice to the Registrar of Companies and the Director.

(2) Where the appointment of the receiver is in addition to that of a receiver who already holds office or is in place of a person who has vacated office as receiver, every notice under this section shall state that fact.

188. Notice of receivership

(1) Where a receiver is appointed, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

(2) Where a receiver is appointed in relation to a specific asset, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver that relates to the asset and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

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

189. Vacancy in office of receiver

(1) The office of a receiver shall become vacant if the person holding office resigns, dies or becomes disqualified.

(2) A receiver appointed under a power conferred by an instrument may resign office by giving not less than 7 days' written notice of his intention to resign to the person by whom he was appointed.

(3) If, for any reason other than resignation, a vacancy occurs in the office of a receiver, written notice of the vacancy shall forthwith be delivered to the Director and to the Registrar of Companies by the person vacating office or, if that person is unable to act, by his legal representative.

(4) A receiver appointed by the Court shall not resign without first obtaining the leave of the Court to do so.

(5) A person vacating the office of receiver shall, where practicable, provide such information and give such assistance in the conduct of the receivership to his successor as that person reasonably requires.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the Court may make any order that it considers necessary or desirable to facilitate the performance of his duties.

190. Powers of receiver

(1) A receiver shall have the powers and authorities expressly or impliedly conferred by the instrument or the order of the Court by or under which the appointment was made.

(2) Subject to the instrument or order of the Court by or under which the appointment was made, a receiver shall have and may exercise the powers set out in the Eighth Schedule.

(3) A receiver may, subject to the instrument or order of the Court by or under which the appointment is made, exercise the receiver's powers and authorities to the exclusion of the board of directors or chargor.

(4) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the instrument under which, or the order of the Court by which, they are appointed expressly provides otherwise.

191. Precedence among receivers

(1) Where there are 2 or more floating charges subsisting over the property of the company, a receiver may be appointed by virtue of every such charge.

(2) A receiver appointed by, or on the application of, the holder of a floating charge which has priority over any other floating charge by virtue of which a receiver has been appointed, has the power conferred on the receiver by this Act to the exclusion of any other receiver.

(3) Where 2 or more floating charges rank equally with one another, and 2 or more receivers have been appointed by virtue of the charges, the receivers so appointed are deemed to have been appointed as joint receivers and shall act jointly unless the instrument of appointment or each of the respective instructions of appointment otherwise provides.

(4) (a) Subject to subsection (5), the powers of a receiver appointed by, or on the application of, the holder of a floating charge are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority over that charge to such an extent as may be necessary to enable the receiver second mentioned to exercise his powers under this Act.

(b) Any power to suspend takes effect again when the prior floating charge ceases to attach to the property subject to the charge, or when the appointment of a receiver under the prior floating charge ceases in respect of that property, whichever first occurs.

(5) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him to release any part of the property of the company from his control until he receives from the receiver superseding him a valid indemnity, subject to the limit of the value of such part of the property as is subject to the charge by virtue of which he was appointed, in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.

(6) The suspension of the powers of a receiver under subsection (4) shall not cause the floating charge by virtue of which he was appointed to cease to attach to the property in respect of which he was appointed.

(7) Nothing in this section shall prevent the same receiver being appointed by virtue of 2 or more floating charges.

192. Power to make call on shares

(1) (a) A receiver has the same powers as the directors of a company has or, if the company is in liquidation, as the directors would have if it was not in liquidation, to make calls on the shareholders of the company in respect of uncalled capital that is charged under the instrument by or under which the receiver was appointed and charge interest on, and enforce payment of calls.

(b) For the purpose of subsection (1) (a), the expression "uncalled capital" includes any payment in respect of the issue of shares or under the constitution of the company.

(2) The making of a call or the exercise of a power under subsection (1) is, as between the shareholders of the company affected and the company, deemed to be a proper call or power made or exercised by directors of the company.

193. Execution of documents

(1) A receiver may execute in the name and on behalf of the company every document necessary or incidental to the exercise of the receiver's powers.

(2) A document signed on behalf of a company by a receiver shall be deemed to have been properly signed on behalf of the company for the purpose of section 181 of the Companies Act.

(3) Notwithstanding any other enactment, or the constitution of a company that is a chargor, where the instrument under which a receiver is appointed empowers him to execute a document, the receiver may execute the document in the name and on behalf of the company.

[S. 193 amended by s. 11 (i) of Act 4 of 2017 w.e.f. 20 May 2017.]

194. Obligations of company and directors

(1) Where a receiver is appointed in respect of the property of a company, the company and every director of the company shall—

(a) within 7 days, make available to the receiver all books, documents and information relating to the property in receivership in the company's possession or under the company's control;

(b) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;

(c) within 14 days after receipt of the notice of the receiver's appointment, or such longer period as may be allowed by the Court, make out and submit a statement as to the affairs of the company; and

(d) give the receiver such assistance as he may reasonably require;

(e) —

(2) The receiver shall, within 28 days after receipt of the statement under subsection (1) (c) or such extended period as the Court may allow—

(a) lodge with the Director and the Registrar of Companies a copy of the statement and of any comments the receiver sees fit to make on the statement;

(b) send to the company a copy of any such comments or, if the receiver does not see fit to make any comment, a notice to that effect; and

(c) where the receiver is appointed by or on behalf of debenture holders, send to the debenture holders' representative a copy of the statement of the receiver's comments thereon or, if the receiver does not see fit to make any comment, a notice to that effect.

(3) The statement as to the affairs of a company required by subsection (1) (c) shall show—

(a) the particulars of the company's assets;

(b) debts and liabilities;

(c) the names and addresses of its creditors;

(d) charges held by them respectively;

(e) the dates when the charges were respectively created,

and include a statement confirming that payment for PAYE, NPF, Training Levy and the Workfare Programme Fund have been paid on the due dates.

(4) The statement shall be submitted in the form of an affidavit by a director and a secretary of the company or by any of the following persons whom the receiver may require—

(a) a person who is or has been an officer;

(b) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) a person who is or has been an employee of the company within that year and is, in the opinion of the receiver, capable of giving the information required; or

(d) a person who is or has been within that year an officer of or employee of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(5) Any person making a statement shall be allowed and shall be paid by the receiver out of his receipts such costs and expenses incurred in and about the preparation and making of the statement as the receiver may consider reasonable.

(6) Any person aggrieved by a decision of the receiver under subsection (5) may, within 10 days, appeal to the Court and the Court, on hearing the appeal, may make such order as it thinks appropriate.

(7) On the application of the receiver, the Court may make an order requiring the company or a director of the company to comply with subsection (1).

[S. 194 amended by s. 11 (j) of Act 4 of 2017 w.e.f. 20 May 2017.]

195. Validity of act of receiver

(1) Subject to subsection (2), no act of a receiver shall be invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorised to do the act.

(2) No transaction entered into by a receiver shall be invalid merely because the receiver was not validly appointed or is not authorised to enter into the transaction unless the person dealing with the receiver has, or ought to have, by reason of his relationship with the receiver or the property by whom the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

196. Consent of mortgagee to sale of property

(1) Where the consent of a mortgagee is required to the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorising the sale of the property, either by itself or together with other assets.

(2) The Court may, on application under subsection (1), make such order as it thinks appropriate authorising the sale of the property by the receiver where it is satisfied that—

(a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and

(b) the sale—

(i) is in the interests of the chargor and chargor's creditors; and

(ii) will not substantially prejudice the interests of the mortgagee.

(3) An order under this section shall be made in accordance with article 2200 of the Code Civil Mauricien on such terms as the Court thinks appropriate.

197. General duties of receiver

(1) A receiver shall exercise his powers in good faith.

(2) A receiver shall exercise his powers in a manner which he believes on reasonable grounds to be in the interests of the person in whose interest he was appointed.

(3) A receiver shall, while acting in accordance with subsections (1) and (2), exercise his powers with reasonable regard to the interests of—

(a) the chargor;

(b) persons claiming, through the chargor, interests in the property in the receivership;

(c) unsecured creditors of the chargor; and

(d) sureties who may be called upon to fulfil the obligations of the chargor.

(4) A receiver shall not be bound to act in accordance with the directions of the person appointing him and any such failure shall not be regarded as being in breach of the duty referred to in subsection (2).

(5) (a) A receiver who exercises a power of sale of property in a receivership shall owe a duty to the chargor to obtain the best price reasonably obtainable as at the time of sale.

(b) Notwithstanding any other enactment or anything contained in the instrument by or under which a receiver is appointed—

(i) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by paragraph (a) that the receiver was acting as the chargor's agent or under a power of attorney from the chargor; and

(ii) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the chargor in respect of any liability incurred by the receiver arising from a breach of the duty imposed by paragraph (a).

(6) A receiver shall keep money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(7) (a) A receiver shall, at all times, keep accounting records in the English or French language, that correctly record and explain all receipts, expenditure and other transactions relating to the property in receivership.

(b) The accounting records shall be retained by the receiver for not less than 6 years after the receivership ends.

(c) —

[S. 197 amended by s. 11 (k) of Act 4 of 2017 w.e.f. 20 May 2017.]

197A. Remuneration of receiver

(1) A receiver shall be entitled to receive remuneration at such rates as may be determined —

(a) by the chargee, where the receiver is appointed pursuant to an instrument of charge; or

(b) by the Court, where the receiver is appointed pursuant to an application made under section 186.

(2) (a) The remuneration referred to in subsection (1) shall not exceed such percentage, as may be prescribed, of the gross realisation proceeds on disposal of assets and any amount received in respect of the property in receivership.

(b) A receiver shall, in addition to a remuneration, be entitled to the reasonable costs of storage of records required to be kept under section 197 (7) (b).

[S. 197A inserted by s. 11 (l) of Act 4 of 2017 w.e.f. 20 May 2017.]

198. First report by receiver

(1) A receiver shall, not later than 2 months after his appointment, prepare a report on the state of the affairs with respect to the property in receivership, including—

(a) particulars of the assets comprising the property in receivership;

(b) particulars of the debts and liabilities to be satisfied from the property in receivership;

(c) the names and addresses of the creditors with an interest in the property in receivership;

(d) particulars of any encumbrance over the property in receivership held by any creditor, including the date on which it was created;

(e) particulars of any default by the chargor in making relevant information available; and

(f) such other information as may be prescribed.

(2) The report shall also include details of—

(a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them;

(b) property disposed of and any proposals for the disposal of property in receivership;

(c) amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed;

(d) amounts owing, as at the date of appointment, to creditors of the chargor having preferential claims; and

(e) amounts likely to be available for payment to creditors other than those referred to in paragraph (c) or (d).

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(3) A receiver may omit from the report required to be prepared under subsection (1) details of any proposals for disposal of the property in receivership where he considers that their inclusion would materially prejudice the exercise of his functions.

199. Further report by receiver

(1) Not later than 2 months after—

(a) the end of each period of 6 months after his appointment as receiver; and

(b) the date on which the receivership ends,

a receiver or a person who was a receiver at the end of the receivership, as the case may be, shall prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership, including all amounts received and paid, during the periods to which the report relates.

(2) The report shall include details of—

(a) property disposed of since the date of any previous report and any proposals for the disposal of property in receivership;

(b) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;

(c) amounts owing, as at the date of the report, to creditors of the chargor who have preferential claims; and

(d) amounts likely to be available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or (c).

(3) A receiver may omit from the report required to be prepared in accordance with subsection (1) (a) details of any proposals for disposal of property in receivership if he considers that their inclusion would materially prejudice the exercise of his functions.

200. Extension of time for preparing reports

A period of time within which a person is required to prepare a report under section 198 or 199 may be extended, on the application of that person, by—

(a) the Court, where the person was appointed a receiver by the Court;

(b) the Registrar of Companies, where the person was appointed a receiver by or under an instrument.

201. Persons entitled to receive reports

(1) A copy of every report prepared under section 198 or 199 shall be sent by the person required to prepare it to the chargor and the chargor shall

as soon as possible cause public notice to be given that a report has been prepared and is available for inspection.

(2) A person appointed as a receiver by the Court shall file a copy of every report prepared under section 198 or 199 in the office of the Court.

(3) Not later than 15 working days after receiving a written request for a copy of any report from—

(a) a creditor, director or surety of the chargor; or

(b) any other person with an interest in any of the property in the receivership,

and on payment of the reasonable costs of making and sending the copy, the person who prepared the report shall send a copy of the report to the person requesting it.

(4) Within 10 working days after preparing a report under section 198 or 199, the person who prepared the report shall send or deliver a copy of the report to the Registrar of Companies.

(5) A person to whom a report must be sent in accordance with subsection (1) or (3) is entitled to inspect the report during normal working hours at the office of the person required to send it.

202. Duty to notify breaches of Acts

(1) A receiver who considers that the company or any director or officer of the company has committed an offence against the Companies Act or the Securities Act shall forthwith report that fact to the Registrar of Companies and the Director.

(2) A report made under subsection (1), and any communication between a receiver and the Registrar of Companies or the Director relating to that report shall be protected by absolute privilege.

203. Notice of end of receivership

Not later than 10 working days after a receivership ceases, the person who held office as receiver at the end of the receivership shall send or deliver to the Registrar of Companies and the Director notice in writing of the fact that the receivership has ceased.

204. Preferential claims

(1) Subject to the rights of any of the persons referred to in subsection (2), a receiver shall pay moneys received by him to the chargee of the charge by virtue of which he was appointed in or towards satisfaction of the debt secured by the charge.

(2) The following persons shall be entitled to payment out of the property of a company in receivership in priority to the chargee of the charge, and in the following order of priority—

(a) first, the receiver for his expenses and remuneration and any indemnity to which he is entitled from out of the property of the company;

(b) second, any amounts secured by any charge that ranks in priority to the charge in relation to which the receiver was appointed; and

(c) third, and notwithstanding anything to the contrary in the Code Civil Mauricien, where the company is in liquidation, the persons entitled to preferential claims to the extent and in the order of priority required by the Fourth Schedule.

(3) The receiver shall hold and retain from any property of a company subject to the charge or any proceeds of realisation of such property, sufficient funds or value of property to discharge any claims under subsection (2) (b) and (c) on trust under the Trusts Act or otherwise for the benefit of the persons entitled.

205. Powers of receiver on liquidation

(1) Subject to subsection (2), a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that has been put into liquidation unless the Court orders otherwise.

(2) After the commencement of the winding up of a company, a receiver may not be appointed in respect of the property of the company except under an order of the Court on such terms as the Court thinks appropriate.

(3) A receiver holding office in respect of property referred to in subsections (1) and (2) may act as the agent of the chargor only—

(a) with the written approval of the Court; or

(b) with the written consent of the liquidator.

(4) A debt or liability incurred by a chargor through the acts of a receiver who is acting as the agent of the chargor in accordance with subsection (2) is not a cost, charge or expense of liquidation.

206. Liability of receiver

(1) Subject to subsections (2) and (3), a receiver is personally liable—

(a) on a contract entered into by the receiver in the exercise of any of his powers; and

(b) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his appointment if notice of the termination of the contract is not lawfully given within 14 days after the date of appointment.

(2) The terms of a contract referred to in subsection (1) (a) may exclude or limit the personal liability of the receiver other than a receiver appointed by the Court.

(3) The Court may, on the application of a receiver, made before the end of the period of 14 days, extend the period within which notice of the

termination of a contract is required to be given under subsection (1) (b) and may extend that period on such terms and conditions as the Court thinks fit.

(4) Subject to subsection (6), a receiver is personally liable, to the extent specified in subsection (5), for rent and any other payments becoming due under an agreement subsisting at the date of his appointment relating to the use, possession or occupation by the chargor of property in receivership.

(5) The liability of a receiver under subsection (4) is limited to that portion of the rent or other payments which is attributed to the period commencing 14 days after the date of appointment of the receiver and ending on—

(a) the date on which the receivership ends; or

(b) the date on which the chargor ceases to use, possess or occupy the property,

whichever occurs earlier.

(6) The Court may, on the application of a receiver—

(a) limit the liability of the receiver to a greater extent than that specified in subsection (5); or

(b) excuse the receiver from the liability under subsection (4).

(7) Nothing in subsection (4) or (5)—

(a) shall be taken as giving rise to an adoption by the receiver of an agreement referred to in subsection (4); or

(b) shall render a receiver liable to perform any other obligation under the agreement.

(8) A receiver is entitled to an indemnity out of the property in receivership in respect of his personal liability under this section.

(9) Nothing in this section—

(a) limits any other right of indemnity to which a receiver may be entitled;

(b) limits the liability of a receiver on a contract entered into without authority; or

(c) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

207. Relief from liability

(1) The Court may relieve a person who has acted as a receiver from any personal liability incurred in the course of the receivership where it is satisfied that—

(a) the liability was incurred solely by reason of a defect in the appointment of the receiver or in the instrument or order of the Court by or under which the receiver was appointed; and

(b) the receiver acted honestly and reasonably and ought, in the circumstances, to be excused.

(2) The Court may exercise its powers under subsection (1) subject to such terms as it thinks appropriate.

(3) A person in whose interests a receiver was appointed is liable, subject to such terms as the Court thinks appropriate, to the extent to which the receiver is relieved from liability under subsection (1).

208. Court supervision of receiver

(1) The Court may, on the application of a receiver—

(a) give directions in relation to any matter arising in connection with the performance of the functions of the receiver; and

(b) revoke or vary any such directions.

(2) The Court may, on the application of a person referred to in subsection (3)—

(a) in respect of any period, review the remuneration of a receiver at a level which is reasonable in the circumstances;

(b) to the extent that an amount retained by a receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount; or

(c) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.

(3) Any of the following persons may apply to the Court under subsection (2)—

(a) the receiver;

(b) the chargor;

(c) a creditor of the chargor;

(d) a person claiming, through the chargor, an interest in the property in receivership;

(e) a liquidator; or

(f) the Director.

(4) The powers of the Court under subsections (1) and (2)—

(a) are in addition to any other power which the Court may exercise; and

(b) may be exercised whether or not the receiver has ceased to act as receiver when an application is made.

(5) The Court may, on the application of a person referred to in subsection (3), revoke or vary an order made under subsection (2).

(6) Subject to subsection (7), it is a defence to a claim against a receiver in relation to any act or omission by the receiver that he acted in accordance with a direction given under subsection (1).

(7) The Court may, on the application of a person referred to in subsection (3), order that, by reason of the circumstances in which a direction was obtained under subsection (1), a receiver is not entitled to the protection given by subsection (6).

209. Court may terminate or limit receivership

(1) The Court may, on the application of the chargor or a liquidator of the chargor—

(a) order that a receiver shall cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership; or

(b) order that a receiver shall, as from a specified date, act only in respect of specific assets forming part of the property in receivership.

(2) An order may be made under subsection (1) only where the Court is satisfied that—

(a) the purpose of the receivership has been satisfied so far as possible; or

(b) circumstances no longer justify its continuation.

(3) Unless the Court orders otherwise, a copy of an application under this section shall be served on the receiver not less than 5 working days before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1)—

(a) may be made on such terms as the Court thinks appropriate; and

(b) shall not affect a security or charge over the property in respect of which the order is made.

(5) The Court may, on the application of any person who applied for or is affected by the order, rescind or amend an order under this section.

210. Order to enforce receiver's duties

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

(a) the Registrar of Companies;

(b) a receiver;

(c) a person seeking appointment as a receiver;

(d) the chargor;

(e) the chargee;

(f) a person with interest in the property in receivership;

(g) a creditor of the chargor;

(h) a guarantor of an obligation of the chargor;

(i) a liquidator of the chargor;

(j) the Director; or

(k) a receiver of the property of a chargor in relation to a failure to comply by another receiver of the property of the chargor.

(2) No application may be made to the Court in relation to a failure to comply unless notice of the failure to comply has been served on the receiver not less than 7 days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, a failure to comply, the Court may—

(a) relieve the receiver of the duty to comply, wholly or in part; or

(b) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply to the extent specified in the order.

(4) The Court may, in respect of a person who fails to comply with an order made under subsection (3) (b), or is or becomes disqualified to become or remain a receiver—

(a) remove the receiver from office; or

(b) order that the person may be appointed and act or may continue to act as a receiver, even where he is not qualified.

(5) Where it is shown to the satisfaction of the Court that a person is unfit to act as a receiver by reason of—

(a) persistent failures to comply; or

(b) the seriousness of a failure to comply,

the Court shall make, in relation to that person, a prohibition order for a period not exceeding 5 years.

(6) A person to whom a prohibition order applies shall not—

(a) act as a receiver in any receivership and if currently acting shall cease to act;

(b) act as a liquidator in any liquidation; or

(c) act as an administrator.

(7) In making an order under this section the Court may, if it thinks appropriate—

(a) make an order extending the time for compliance;

(b) impose any term or condition; or

(c) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall, within 14 days of the order being made, be delivered by the applicant to the Registrar of Companies and to the Director who shall keep it on a public file indexed by reference to the name of the receiver concerned.

(9) Evidence that, on 2 or more occasions within the preceding 5 years—

(a) a Court has made an order to comply under this section, and section 337 or 338 of the Companies Act in respect of the same person; or

(b) an application for an order to comply under this section, and section 337 or 338 of the Companies Act has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing,

is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.

211. Order for protection of property in receivership

The Court may, on making an order that removes, or has the effect of removing, a receiver from office, make such order as it thinks fit—

(a) for preserving the property in receivership; and

(b) requiring the receiver for that purpose to make available to any person specified in the order any information and document in the possession or under the control of the receiver.

212. Refusal to provide essential service

(1) In this section,—

"essential service" means—

(a) the retail supply of electricity;

(b) the supply of water; or

(c) telecommunication services;

"telecommunication services" means the conveyance from one device to another, by any line, radio frequency or other medium, of any sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device.

(2) Notwithstanding any other enactment or any contract, a supplier of an essential service shall not—

(a) refuse to supply the service to a receiver or to the owner of the property in receivership by reason of the chargor's default in paying charges due for the service in relation to a period before the date of the appointment of the receiver; or

(b) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership that payment be made of outstanding charges due for the service in relation to a period before the date of appointment of the receiver.

(3) Nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any enactment in respect of a failure by a company to pay charges due for the service in relation to any period after the commencement of the liquidation.

Sub-Part IV – Voluntary Administration

Section A – Preliminary

213. Scope of Sub-Part IV

The object of this Sub-part is to provide for the business, property and affairs of a company to be administered in a way that—

(a) provides the opportunity for the company or as much as possible of its business, to continue in existence; or

(b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from the immediate winding up of the company.

213A. Interpretation of Sub-Part IV

(1) In this Sub-part,—

"administration" means the process for administration of a company that begins when an administrator is appointed under this Sub-Part and ends in terms of section 214;

"administrator" means the person who is appointed the administrator of the company in administration;

"company" includes a partnership the assets of which, in its balance sheet for its last financial year, have a value of 1,000,000 rupees or more or such other figure as may be prescribed;

"convening period" has the meaning assigned to it by section 237 (2);

"deed administrator" means the person who is appointed the administrator of a deed of company arrangement;

"deed of company arrangement" means the deed that is executed by a company and its creditors providing for payments towards the creditors' debts;

"director", in the case of a partnership, means a partner;

"enforcement process", in relation to property, means—

(a) execution against that property; or

(b) any other enforcement process in relation to that property that involves a Court or an usher;

"insolvent" in relation to a company, means that the company is unable to pay its debts, as and when they become due and payable;

"liquidation or winding up", in relation to a partnership, means adjudication in bankruptcy.

(2) This Sub-part does not apply to a bank or a financial institution within the meaning of the Banking Act.

214. Administration

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

(2) The administration of a company ends where—

(a) a deed of company arrangement is executed by the company and the deed's administrator;

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

(c) the company's creditors 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 that the administration end because it 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 it, and the administration ends at the end of that period;

(c) an application has been made to the Court to extend the convening period, which has expired after the application was made, and the administration ends when the application is refused or otherwise disposed of without the convening period being extended;

(d) a watershed meeting ends without a resolution that the company execute a deed of arrangement, and the administration ends at the end of that meeting;

(e) the company fails to execute a proposed deed of company arrangement within the time allowed by section 261 (2) and the administration ends when that time expires; or

(f) the Court appoints a liquidator or an interim liquidator and the administration ends at the time when the order is made.

Section B – Appointment of administrator

215. Appointment of administrator

(1) Subject to subsection (2), a natural person may be appointed an administrator of a company.

(2) A person shall not be appointed administrator where—

(a) he is disqualified from being appointed as a liquidator, unless the Court orders otherwise; or

(b) he is not qualified to be an Insolvency Practitioner.

(3) A person shall not be appointed administrator unless he has consented in writing and has not withdrawn the consent at the time of appointment and that consent is filed with the Registrar of Companies.

(4) An administrator may be appointed by—

(a) the company;

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

(c) where a provisional liquidator has been appointed, the provisional liquidator;

(d) a secured creditor holding a charge over the whole, or substantially the whole, of the company's property; or

(e) the Court.

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

(a) the Court;

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

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

(6) (a) A company may appoint an administrator where the directors have resolved that—

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

(ii) an administrator of the company should be appointed.

(b) The appointment shall be in writing.

(c) The company shall not appoint an administrator if it is already in liquidation.

(7) (a) The liquidator or provisional liquidator of a company may appoint an administrator if he thinks that the company is insolvent or is likely to become insolvent.

(b) The appointment shall be in writing and shall state the date of the appointment.

(c) The liquidator or provisional liquidator may appoint himself administrator if he first obtains—

(i) the permission of the Court; or

(ii) in the case of a liquidator but not a provisional liquidator, the approval of the company's creditors in the form of a resolution passed at a meeting of the creditors.

(d) A liquidator or provisional liquidator shall not appoint as administrator a person who is the liquidator's or provisional liquidator's business or professional partner, employer or employee, unless the appointment has been approved by the company's creditors in the form of a resolution passed at a creditors' meeting.

(8) (a) A person who holds a charge over the whole, or substantially the whole, of a company's property or the receiver appointed by that person, may appoint an administrator where the charge has become, and is still, enforceable.

(b) The appointment shall be in writing.

(c) The secured creditor or receiver shall not appoint an administrator where the company is already in liquidation.

(9) The Court may appoint an administrator on the application of a creditor, the liquidator (if the company is in liquidation), the Director or the Registrar of Companies where it 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.

(10) An administrator who is appointed to a company already in liquidation may apply to the Court for an order under section 169 for the liquidation to resume.

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

216. Appointment of 2 or more administrators

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

(2) Where 2 or more persons are appointed administrators of a company—

(a) an administrator's function or power may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order, instrument or resolution appointing them provides otherwise; and

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

217. Remuneration of administrator

(1) An administrator is entitled to charge reasonable remuneration for carrying out his duties and exercising his powers as administrator.

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

(3) A creditor or shareholder may make an application under subsection (2) only with the leave of the Court.

218. Vacancy in office of administrator

The office of administrator is vacant where the administrator—

(a) resigns;

(b) becomes disqualified; or

(c) is removed by the Court.

219. Resignation and removal of administrator

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

(2) An administrator may be removed—

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

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

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

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

(a) the same resolution also appoints as administrator another person who is not disqualified; and

(b) 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.

220. New administrator to fill vacancy

(1) The appointer of an administrator may appoint a replacement to fill a vacancy that occurs where the administrator—

(a) resigns; or

(b) becomes disqualified.

(2) The appointment of a replacement administrator by a company shall be made by a resolution of the directors.

221. Creditors to consider appointment of replacement administrator

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

(2) The meeting shall be held not more than 7 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 as many of the company's creditors as reasonably practicable; and

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

(4) The replacement administrator shall take the steps set out in subsection (3) not less than 2 working days before the meeting.

Section C – Effect of appointment

222. Administrator's role

(1) While a company is in administration, the administrator—

(a) has control of the company's business property and affairs;

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

(c) may carry on that business and manage that property and those affairs with the objective of salvaging the company's business in the interests of creditors, employees and shareholders;

(d) may terminate or dispose of all or part of that business and may dispose of any of that property; and

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

(2) (a) In this subsection, "administrator" includes a deed administrator.

(b) Every administrator shall file an account with the Registrar of Companies with a copy to the Director for each of the following periods—

(i) the period of 6 months (or shorter, as the administrator decides) after the day on which the administrator was appointed;

(ii) each subsequent period of 6 months during which the administrator holds office; and

(iii) the period between the last period of the kind referred to in subsection (2) (b) (ii) and the day on which the administrator vacates office.

(c) The administrator shall file the account within 28 days after the end of the period in question.

(d) The account shall be in the prescribed form and must show—

(i) for each period, the administrator's receipts and payments; and

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

(3) A payment made, transaction entered into, or any other act or thing done, 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) if the company is placed in liquidation, must not be set aside in the liquidation.

223. Administrator's powers

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

(2) An administrator's powers include the power to—

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

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

(c) appoint an agent to do anything that the administrator is unable to do.

(3) An administrator, when performing a function or exercising a power in that capacity, is the company's agent.

224. Effect on company officers

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

(2) A director of a company that is in administration may not exercise or perform, or purport to exercise or perform, a function or power as an officer of the company except—

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

(b) as expressly permitted by this Sub-part.

225. 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 is not personally liable for any obligation of the company under an employment agreement to which the company is a party, unless the administrator expressly adopts the agreement in writing, or subsection (3) applies.

(3) The administrator is personally liable for payment of wages or salary that, during the administration of the company, accrue under a contract of employment with the company that was entered into before the administrator's appointment, unless the administrator has lawfully given notice of the termination of the contract within 21 days of appointment.

(4) The Court may, on the administrator's application, extend the period of 21 days in subsection (3) within which notice of termination must be given, and may extend it on terms that the Court thinks appropriate.

226. Effect on dealing with company property

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

(a) by the administrator, on the company's behalf;

(b) with the administrator's prior written consent; or

(c) under an order of the Court.

(2) The Court may validate a transaction or dealing that is void under subsection (1).

(3) 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 bank's banking business; 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.

227. Effect on transfer of shares

(1) Subject to this section, a share in a company in administration shall not be transferred and the rights or liabilities of a shareholder of the company may not be altered.

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

(3) The Court may make an order for—

(a) the transfer of a share of a company in administration, but only after the administrator has been asked to consent to the transfer and has refused or failed to respond for an unreasonable time; or

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

228. Investigation of company's affairs

As soon as practicable after the administration of a company begins, the administrator shall—

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

(b) form an opinion about whether it would be in the creditor's interest for—

(i) the company to execute a deed of company arrangement;

(ii) the administration to end; or

(iii) a liquidator to be appointed.

229. Directors' statement

(1) Within 7 days after the administration of a company begins, the directors shall give to the administrator a statement about the company's business, property, affairs and financial circumstances.

(2) The administrator may extend the time for compliance with subsection (1).

(3) The administrator shall table the directors' statement—

(a) at the first creditors' meeting; or

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

230. Right to obtain documents and information

An administrator shall have and may exercise any of the powers vested in a liquidator pursuant to sections 118 to 122.

231. Report by administrator

(1) An administrator may lodge a report with the Director specifying any matter that, in his opinion, should be brought to the Director's notice.

(2) An administrator shall as soon as practicable report the matter to the Director where he believes that—

(a) a past or present officer or shareholder of the company may have committed an offence involving dishonesty or an offence under section 212, 213 or 240 of the Companies Act; 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 company's money or property in Mauritius or elsewhere; or

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

(3) In any case where the administrator makes a report under subsection (2), the administrator shall give to the Director such assistance as the Director may reasonably require by way of—

(a) provision of information;

(b) access to documents; and

(c) facilities for inspecting and copying documents.

(4) In any case where the Court is satisfied that the administrator should make a report under subsection (2) and has not done so, the Court may, on the application of an interested person, direct the administrator to make a report.

232. Administrator to call creditors' meetings

(1) An administrator shall call—

(a) the first creditors' meeting, for the appointment, if any, of a committee of creditors;

(b) a watershed meeting; and

(c) such other creditors' meetings as may be required by the creditors' committee or the administrator.

(2) Subject to section 238, clauses 4, 6 to 8 and 10 to 12 of the First Schedule apply to creditors' meetings called under this Sub-part as if references to "the liquidator" were references to "the administrator".

(3) At any meeting of creditors or class of creditors held under this Sub-part, a resolution is adopted if a majority in number representing 75 per cent in value of the creditors or class of creditors voting in person, or by proxy vote or by postal vote, vote in favour of the resolution.

(4) The administrator or the administrator's nominee shall chair a creditors' meeting, and has a casting vote.

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

(6) 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.

(7) For the purposes of subsection (5), a creditor is taken to have consented to the joint meeting where—

(a) a written notice that complies with subsection (8) 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.

(8) The notice shall—

(a) be in writing; and

(b) state—

(i) the administrator's postal, email and street addresses;

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

(iii) that the creditor to whom it is sent may object to the joint meeting by sending a written objection to the administrator at the administrator's postal, email or street address for receipt by the administrator within the time specified in the notice; and

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

(9) For the purposes of subsection (8) (b) (iii) the administrator may, in his discretion, determine the time for receipt of an objection, but must specify a time that is reasonably practicable in the circumstances.

233. Power of Court regarding creditors' meeting

(1) Where the Court is satisfied that—

(a) a resolution at a creditors' meeting was passed, defeated or required to be decided by a casting vote;

(b) the resolution would not have been passed, defeated or required to be decided by a casting vote if the vote cast by a particular related creditor were disregarded; and

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

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

(ii) has prejudiced or is reasonably likely to prejudice, the interests of the creditor who voted against the resolution, or for it, as the case may be, to an extent that is unreasonable having regard to—

(A) the benefits accruing to the related creditor, or to some or all 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,

the Court may, on the application of a creditor or the administrator—

(aa) order that the resolution be set aside;

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

(cc) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it; or

(dd) make any other order that the Court thinks appropriate.

(2) In this section—

"promoter"—

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

(b) where a company is a promoter, includes every person who is a director of the company; but

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

"related creditor" means a creditor who is a related entity of the company in administration;

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

(a) a promoter;

(b) a relative or spouse of a promoter;

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

(d) a director or shareholder;

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

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

(g) a related company;

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

(i) a relative or spouse of that beneficiary;

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

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

(l) 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.

234. First creditors' meeting

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

(a) decide whether to appoint a creditors' committee and, if so, to appoint its members; and

(b) decide whether to replace the administrator.

(2) The meeting shall be held within 10 days after the date on which the administration begins.

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

(a) giving written notice of the meeting to as many of the company's creditors as disclosed by the records kept by the company, as is reasonably practicable; and

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

(4) The administrator shall take the steps set out in subsection (3) not less than 6 days before the meeting.

(5) The administrator shall table at the first creditors' meeting 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 its officers, shareholders or creditors.

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

235. Function of creditors' committee

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

(a) to consult with the administrator about matters relating to the administration; and

(b) to receive and consider reports by the administrator.

(2) The committee may not give directions to the administrator, but the administrator shall report to the committee about matters relating to the administration as and when the committee reasonably requires.

236. Membership of creditors' committee

A person may be a member of the creditors' committee only if he is—

(a) a creditor of the company;

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

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

237. Watershed meeting

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

(2) The convening period is the period of 28 days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The Court may, on the administrator's application, extend the convening period, but shall not do so 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.

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

(a) giving written notice of the meeting to as many of the company's creditors as is reasonably practicable; and

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

(5) The administrator shall take the steps set out in subsection (4) not less than 7 days before the meeting.

(6) The following documents shall accompany the notice—

(a) a report by the administrator—

(i) about the company's business, property, affairs and financial circumstances; and

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

(b) a statement setting out the administrator's opinion, with reasons for that opinion, about—

(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement;

(ii) whether it would be in the creditors' interests for the administration to end; or

(iii) whether it would be in the creditors' interests for the company to be placed in liquidation; and

(c) if a deed of company arrangement is proposed, a statement setting out the details of the proposed deed.

(7) The watershed meeting shall be held within 7 days after the end of the convening period or extended convening period, as the case may be.

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

(9) A director need not attend the watershed meeting where—

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

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

(10) A director attending the watershed meeting shall leave for all or part of the remainder of the meeting if required by a resolution of the creditors to do so.

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

238. Pooled property owners

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

(2) Every pooled property owner is bound by a deed of company arrangement as if he had 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) at the watershed meeting the creditors (including the pooled property owners) approved the resolution; and

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

(3) It is not necessary that a separate meeting of the pooled property owners be held for the purpose of voting on the resolution.

(4) This section shall be in addition to, and not in derogation from sections 265 and 266.

(5) In this section—

"pooled property owners" means all of the owners or lessors of property that is pooled in a single enterprise forming part of the business of a company in administration;

"requisite majority" means a majority in number representing 75 per cent in value of the pooled property owners voting in person or by proxy vote or by postal vote;

"resolution" means a resolution that a company in administration execute the deed of company arrangement specified in the resolution.

239. Adjournment of watershed meeting

A watershed meeting may be adjourned to a day that is not more than 42 days after the first day on which the meeting was held, unless the Court, on the administrator's application, orders that the meeting be adjourned for more than 42 days.

240. Decisions at watershed meeting

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

(a) resolve that the company execute a deed of company arrangement specified in the resolution;

(b) resolve that the administration should end; or

(c) unless the company is already in liquidation, by resolution, appoint a liquidator.

(2) The resolution referred to in subsection (1) shall be carried with the majority and in accordance with sections 232 and 233.

241. Proposed deed not fully approved

(1) Where at a watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting, the administrator shall take the steps set out in section 262.

(2) The administrator shall inform the creditors at the watershed meeting that—

(a) they have the right to inspect and comment on the draft deed; and

(b) the administrator has the ultimate responsibility for drafting the deed and the executed deed may differ from the draft.

Section D – Protection of company property

242. Charge unenforceable

Subject to Section E, during the administration of a company no person shall enforce a charge over the property of the company, except—

(a) with the administrator's written consent; or

(b) with the permission of the Court.

243. Recovery of property

(1) During the administration of a company, the owner or lessor of property that was used or occupied by, or is in the possession of, the company shall not take possession of the property or otherwise recover it, except—

(a) with the administrator's written consent; or

(b) with the permission of the Court.

(2) Subsection (1) shall 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.

244. Proceedings in Court

During the administration of a company, proceedings in a Court against the company or in relation to any of its property shall not be commenced or continued, except—

(a) with the administrator's written consent; or

(b) with the permission of the Court on terms that the Court thinks appropriate.

245. Refusal of administrator's consent

An administrator is not liable in damages for a refusal to give an approval or consent for the purposes of this Sub-part.

246. Enforcement process

During the administration of a company, an enforcement process in relation to the company's property shall not be commenced or continued except with the permission of the Court and on terms that the Court thinks appropriate.

247. Duties of Court Officer in relation to company's property

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

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

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

(i) proceeds of the sale of the company's property under an execution process;

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

(iii) money paid to avoid seizure or sale of property of the company under an execution process;

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

(d) pay to any person other than the administrator money received because of the attachment of a debt due to the company.

(2) The Court Officer shall deliver to the administrator any property of the company that is in his possession under an execution process.

(3) The Court Officer shall pay to the administrator all proceeds or money of a kind referred to in subsection (l) (b) or (d) that—

(a) are in the Court Officer's possession; or

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

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

(5) In order to give effect to a charge under subsection (4), on proceeds or money, the Court Officer may retain, on behalf of the person entitled to the charge, so much of the proceeds as the Court Officer thinks necessary.

(6) The Court may, where it is satisfied that it is appropriate to do so, permit the Court Officer to take action, or make a payment, that subsection (1) would otherwise prevent.

(7) Notwithstanding this section, a person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the company and the administrator.

248. *Lis pendens* taken to exist

For the purposes of any enactment relating to the effect of a *lis pendens* on purchasers or mortgagees, an application for the appointment of a liquidator to the company shall, during the administration of a company, be taken to be pending and shall constitute a *lis pendens.*

249. Liability of director or relative

(1) During the administration of a company, except with the Court's permission and on terms that the Court thinks appropriate, a guarantee of a liability of the company shall not be enforced against—

(a) a director of the company who is a natural person;

(b) that person's spouse or relative; or

(c) any related company.

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

Section E – Rights of secured creditor

250. Interpretation of Section E

In this section—

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

(a) begins—

(i) where notice of the appointment of an administrator must be given to the chargeholder under section 287, on the day when that notice is given; or

(ii) in any other case, on the day when the administration begins; and

(b) ends at the end of the fourteenth day after the day when it begins;

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

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

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

(c) give notice converting a floating charge into a fixed charge;

(d) enter into possession, or assume control, of that property;

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

(f) exercise as secured creditor or as a receiver or person so appointed, a right, power or remedy existing because of the charge, whether arising under an instrument relating to the charge, under an enactment or otherwise.

251. Leave to enforce security

(1) A secured creditor who is affected by appointment of an administrator may, within the specified period, apply to the Court for an order granting leave to him to enforce his security.

(2) A secured creditor who makes an application to the Court under subsection (1) shall, on the day on which the application is filed with the Court, give notice of the application to the administrator.

(3) The administrator shall, within 7 days of receiving the application,—

(a) file with the Court a notice informing the Court whether the administrator supports or opposes the application;

(b) at the same time file with the Court a report on the assets and liabilities of the company under administration to the extent that these are known to the administrator;

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

(d) provide a statement of reasons in support or opposition of the application, as the case may be.

(4) The Court shall, within 7 days of receiving the administrator's notice, conduct a hearing on the application.

(5) The Court may, at the hearing conducted under subsection (4),—

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

(b) where it considers that it is 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 21 days.

(6) The Court, when determining the secured creditor's application, may make an order granting leave to the secured creditor to enforce the secured creditor's security over the property of the company where it is satisfied that in all the circumstances of the case serious prejudice will be caused to the secured creditor if the application is not granted which outweighs the prejudice caused to other creditors arising from the granting of the application.

(7) The Court, in making an order under subsection (6), may make that order on such terms as the Court thinks appropriate, including—

(a) the making of an order that the secured creditor, the receiver or other person involved in the enforcement of the security shall not perform specified functions or exercise specified powers except as permitted by further order of the Court;

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

(c) directing that the enforcing by a creditor of its security 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.

(8) A secured creditor who is granted leave to enforce his security under this section shall, from time to time at intervals not exceeding 3 months, report to the administrator on the enforcement of his security and the proceeds thereby recovered by the secured creditor.

(9) In the case of perishable property, the Court may, on an application under this section make an order granting leave to the secured creditor to forthwith enforce his security so far as it is a security over perishable property and to hold any proceeds that are recovered by the secured creditor on trust for the administrator pending the conduct of a hearing and the making by the Court of an order under subsection (6).

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

252. Recovery of property before administration

(1) Where, before the beginning of the administration of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it—

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

(b) exercised any other power in relation to the property,

sections 242 and 243 shall not prevent the receiver or other person from performing a function, or exercising a power in relation, to the property.

(2) Section 226 shall not apply in relation to a transaction or dealing that affects the property and is entered into in the performance or exercise of a function or power of the receiver or other person.

253. Appointment of liquidator to company in administration

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

(a) by the Court, on an application under section 102; or

(b) by resolution of the creditors at a watershed meeting or at a meeting convened under section 275 to consider the termination of a deed of company arrangement.

(2) The Court may adjourn an application under section 104 for the appointment of a liquidator of a company in administration where it is satisfied that it is in the interests of the company's creditors for the company to continue in administration rather than be placed in liquidation.

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

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

(5) In the case of the appointment by the creditors of a liquidator to a company in administration, the administrator shall be the liquidator where—

(a) the creditors' resolution does not nominate a person for appointment;

(b) the person nominated is disqualified from acting as the liquidator or has not consented in writing; or

(c) the person nominated is for any other reason unable or unwilling to act as liquidator.

(6) (a) Where a liquidator is appointed to a company that is in administration under a deed of company arrangement, the person in control of the company immediately before the appointment of the liquidator shall as soon as practicable lodge with the Registrar of Companies—

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

(ii) a further report updating the administrator's report with any matters of which the officer is aware that—

(A) are not referred to in the administrator's report, or have changed since that report; and

(B) affect the financial position of the company.

(b) Where there is no administrator or deed administrator acting when the company is placed in liquidation, the directors of the company at the date of liquidation shall take the steps described in paragraph (a) as if they were the administrator or deed administrator.

254. Act of administrator

(1) A payment made, transaction entered into, or any other act or thing 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) Sub-part IV of Part IV shall 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 deed administrator; or

(b) specifically authorised by the deed of company arrangement and carried out by the deed administrator.

Section F – Deed administrator

255. Deed administrator

(1) The administrator of a company in administration shall be the deed administrator, unless the creditors at the watershed meeting by resolution appoint someone else to be the deed administrator.

(2) A natural person who is not disqualified under subsection (3) may be appointed deed administrator.

(3) A person shall not be appointed deed administrator if that person is disqualified from acting as a liquidator of the company, unless the Court orders otherwise.

(4) A person shall not be appointed deed administrator unless that person has consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed.

(5) Except in the case of removal by the Court, the appointment of a deed administrator shall not be revoked.

(6) Two or more persons may be appointed deed administrators.

(7) Where 2 or more persons are appointed deed administrators jointly—

(a) a deed administrator's function or power may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order, instrument or resolution appointing them provides otherwise; and

(b) a reference in this Act to a deed administrator refers to whichever one or more of the deed administrators as the case requires.

256. Vacancy of office, resignation or removal

(1) The office of a deed administrator shall be vacant if the deed administrator—

(a) resigns;

(b) becomes disqualified; or

(c) is removed by the Court.

(2) A deed administrator may resign by giving written notice to the company.

(3) The Court may—

(a) remove a deed administrator and appoint a person in his place; or

(b) appoint a new deed administrator, if the deed of company arrangement has not yet terminated but for some reason no deed administrator is acting.

(4) The Court may make an order under subsection (3) on the application of a creditor of the company, a shareholder, the liquidator (if the company is in liquidation), the Registrar of Companies or the Director.

257. Remuneration of deed administrator

(1) A deed administrator is entitled to charge reasonable remuneration for carrying out his duties and exercising his powers as deed administrator.

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

258. Deed administrator may sell shares

(1) A deed administrator may sell existing shares in the company—

(a) with the consent of the shareholder in question; or

(b) where the shareholder does not consent, with the permission of the Court given on an application of the deed administrator.

(2) The shareholder concerned, a creditor or the Registrar of Companies may oppose an application by the deed administrator for the Court's permission.

[S. 258 amended by s. 14 (a) of Act 27 of 2012 w.e.f. 22 December 2012.]

Section G – Deed of company arrangement

259. Application of Section G

This Section shall apply when the creditors, at a watershed meeting, have resolved that the company execute a deed of company arrangement.

260. Preparation and contents of deed

(1) The deed administrator shall prepare a document that sets out the terms of the deed.

(2) The document shall specify—

(a) who is the deed administrator;

(b) the property of the company (whether or not it is already owned by the company when it executes the deed) that will be available to pay creditors;

(c) the nature and duration of any moratorium period for which the deed provides;

(d) to what extent the company will be released from its debts;

(e) the conditions (if any) for the deed to come into operation;

(f) the circumstances in which the deed terminates;

(g) the order in which the proceeds of realisation of the property referred to in paragraph (b) will be distributed among creditors who are bound by the deed; and

(h) the day, which must not be later than the day when the administration began, on or before which creditors' claims must have arisen if they are to be admissible under the deed.

(3) The document shall be deemed to include every provision prescribed under this Act, except those provisions which the document expressly excludes.

261. Execution of deed

(1) A deed of company arrangement is where the deed is executed by the company in administration and the deed administrator.

(2) The deadline for the execution of the deed is—

(a) 21 days after a watershed meeting has approved it; or

(b) the further time that the Court allows, if the deed administrator has applied to the Court for an extension before the end of the initial period of 21 days after approval.

(3) The company may not execute a deed unless the board of the company has, by resolution, authorised the deed to be executed by the company or on its behalf.

(4) Subsection (3) applies notwithstanding section 224, but does not limit the functions and powers of the administrator of the company.

262. Procedure if deed not fully approved

(1) Where, at a watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting—

(a) the administrator shall draft the complete deed and circulate it to the creditors within 14 days after the meeting;

(b) the creditors may inspect the deed for a period of 3 days (not including any Saturday or public holiday) after the end of the period specified in paragraph (a); and

(c) the company and the administrator shall execute the deed within 2 working days after the end of the period specified in paragraph (b).

(2) The Court may extend the period referred to in subsection (1) (a) by up to 10 working days, on an application by the administrator, but only if the application is made within that period.

(3) The Court may extend the period referred to in subsection (1) (c) by up to 2 days (not including any Saturday or public holiday) on an application by the administrator, but only if the application is made within that period.

263. Act of creditor

No person shall in so far as he would be bound by a deed if it had already been executed—

(a) do anything inconsistent with the deed, except with the permission of the Court; or

(b) take a step that is prohibited under section 267,

during the period between a resolution passed at the watershed meeting that the company execute a deed of company arrangement and the sooner of—

(i) execution of the deed by the company and the deed administrator; or

(ii) expiry of the period during which the deed may be executed.

264. Company's failure to execute deed

Where the creditors at a watershed meeting have passed a resolution that the company execute a deed of company arrangement and the company fails to do so within the deadline for execution, the administrator shall—

(a) apply to the Court for the appointment of a liquidator to the company; or

(b) if the company is already in liquidation, apply to the Court for the liquidation to resume.

[S. 264 amended by s. 28 (c) of Act 9 of 2015 w.e.f. 14 May 2015.]

265. Who is bound by deed

A deed of company arrangement binds—

(a) the company's creditors, to the extent provided by section 266;

(b) the company;

(c) the company's officers and shareholders; and

(d) the deed administrator.

266. Extent to which deed binds creditors

(1) A deed of company arrangement binds all creditors including secured creditors in respect of claims that arise on or before the day specified in the deed pursuant to section 260 (2) (h).

(2) A secured creditor may not realise or otherwise enforce his charge except so far as—

(a) the deed provides for the secured creditor to realise or enforce his charge and the secured creditor at the watershed meeting

voted in favour of the resolution as a result of which the company executed the deed; or

(b) the Court makes an order to that effect under section 268.

(3) An owner or lessor of property may not exercise his rights in relation to that property, except so far as—

(a) the deed 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 deed; or

(b) the Court makes an order to that effect under section 268.

267. Prohibited acts

(1) A person who is bound by a deed of company arrangement shall not, while the deed is in force—

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

(b) except with the Court's permission, begin or continue proceedings against the company or in relation to any of its property; or

(c) except with the Court's permission, begin or continue an enforcement process against the company's property.

(2) In this section—

"property" includes property used or occupied by the company, or in its possession.

268. Enforcement of charge or recovery of property

(1) The Court may, at any time after creditors have resolved at a watershed meeting that a deed of company arrangement be executed, order that—

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

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

(2) The Court in making an order under subsection (1) may make the order subject to such terms as the Court may determine.

(3) The Court may make an order under subsection (1) where—

(a) it is satisfied that achieving the purposes of the deed would not be materially adversely affected if the order were made; and

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

(4) An application for an order under this section may be made where the deed—

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

(b) has been executed, by the deed administrator.

269. Effect of deed on company's debts

(1) A deed of company arrangement releases the company from a debt only insofar as—

(a) the deed provides for the release; and

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

(2) The release of the company from a debt under subsection (1) 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.

270. Court may rule on validity of deed

(1) The Court may rule on the validity of a deed of company arrangement if there is doubt, on a specific ground, whether the deed—

(a) was entered into in accordance with this Sub-part; or

(b) complies with this Sub-part.

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

(a) the deed administrator;

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

(c) the Registrar of Companies.

(3) On an application under this section—

(a) the Court may declare the deed void; or

(b) if the deed is void for contravention of this Sub-part, the Court may validate the deed, where the Court is satisfied that—

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

(ii) no injustice will result for anyone bound by the deed if the contravention is disregarded.

(4) The Court may, where it declares that a provision of the deed is void, vary the deed if the deed administrator consents.

271. Variation of deed by creditors

(1) The creditors may vary a deed of company arrangement by a resolution passed at a meeting convened under section 275, but the

variation must 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 cancelling the variation of the deed of company arrangement by the creditors.

(3) On the application made under subsection (2), the Court may—

(a) cancel or confirm the variation, on specified conditions (if any); and

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

272. Termination of deed

A deed of company arrangement may be terminated—

(a) by the Court under section 273;

(b) by a resolution of the creditors under section 274; or

(c) automatically, where the deed specifies circumstances in which the deed will terminate, and those circumstances occur.

273. Termination by Court

(1) The Court may terminate a deed of company arrangement on the application of—

(a) the company;

(b) a creditor;

(c) the deed administrator; or

(d) any other interested person.

(2) The Court may terminate a deed of company arrangement where it is satisfied that—

(a) an information breach has occurred;

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

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

(d) the deed or a provision of it is, an act done under the deed was, or an act proposed to be done under the deed would 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;

(e) the deed should be terminated for some other reason.

(3) The Court shall not terminate the deed 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 company's business, property, affairs, or financial circumstances—

(i) to the administrator or a creditor; or

(ii) in a report or statement under section 237 (4) that accompanies a notice of meeting at which a resolution that the company execute a deed of company arrangement was passed; or

(b) an omission from the report or statement referred to paragraph (a) (ii),

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 deed of company arrangement.

274. Termination by creditors

(1) The creditors, by a resolution passed at a meeting convened under section 275, may terminate a deed if there has occurred a material breach of the deed that has not been rectified.

(2) The creditors may appoint a liquidator where the notice of the meeting sets out a proposed resolution that a liquidator be appointed to the company.

275. Creditors' meeting to consider proposed variation or termination of deed

(1) The deed administrator—

(a) may at any time convene a meeting of the company's creditors to consider a variation to, or the termination of, the deed; and

(b) shall convene a meeting if requested in writing by creditors whose claims against the company are not less than 10 per cent of the value of the total value of all creditors' claims.

(2) The deed administrator shall convene the meeting by—

(a) giving written notice to as many of the company's creditors as is reasonably practicable; and

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

(3) The administrator shall take the steps set out in subsection (2) not less than 7 days before the meeting.

(4) The notice given to the creditors shall set out any resolution for varying or terminating the deed that is to be considered by the meeting.

(5) The deed administrator shall preside at the meeting.

(6) The meeting may be adjourned from time to time.

Section H – Administrator's liability

276. 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 he incurs, in the performance or exercise, or purported performance or exercise, of any of his 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 notwithstanding any agreement to the contrary, but without prejudice to the administrator's rights 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 becoming due by the company under an agreement—

(a) made before the administration began; and

(b) relating 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) beginning more than 7 days after the administration begins; and

(b) throughout 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 the following—

(i) the end of the administration;

(ii) the giving of a notice under section 277;

(iii) the appointment of a receiver of the property where an order is made under section 268 permitting 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 268; 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 268.

(6) An administrator shall not be deemed, because of subsection (5)—

(a) to have adopted the agreement; or

(b) to be liable under the agreement except as set out in subsection (5).

(7) This section shall not affect the liability of the company for rent and other payments due under the agreement.

277. Non-use notice

(1) An administrator is not liable under section 276 for any period for 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 7 days after the administration begins;

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

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

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

(a) the administrator revokes it by written notice to the owner or lessor; or

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

(3) For the purposes of subsection (2) (b), 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 company's liability for rent and other payments.

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

278. Administrator's indemnity

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

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

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

(2) Subject to section 279, an administrator's right of indemnity under this section has priority over—

(a) all the company's unsecured debts; and

(b) debts of the company having a priority of the kind described in clause 1 (4) of the Fourth Schedule.

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

(4) A *lien* under subsection (3) has priority over a charge to the same extent as the right of indemnity has priority over debts secured by the relevant charge.

279. Court's general power

(1) The Court may make any order that it thinks appropriate about how Sub-part IV is to operate in relation to a particular company.

(2) The Court may terminate an administration pursuant to subsection (1) where it is satisfied that the administration should end—

(a) because the company is solvent;

(b) because the provisions of this Sub-part are being abused; or

(c) for some other reason.

(3) The Court's order may be made subject to conditions.

(4) 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 deed administrator;

(e) the Registrar of Companies;

(f) the Director; or

(g) any other interested person.

280. Order to protect creditor during administration

(1) On the application of the Registrar of Companies or the Director, the Court may make any order that it thinks necessary to protect the interests of the company's creditors while the company is in administration.

(2) On the application of a creditor of a company, the Court may make any order that it thinks necessary to protect the interests of that creditor while the company is in administration.

(3) An order may be made subject to conditions.

281. Court may rule on validity of administrator's appointment

(1) If there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or deed administrator, 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

(c) any of the company's creditors.

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

282. Administrator may seek directions

(1) An administrator or a deed administrator may apply to the Court for directions in relation to the performance or exercise of any of his functions and powers.

(2) A deed administrator may apply to the Court for directions in relation to the operations of, or giving effect to, the deed.

283. Court may supervise administrator or deed administrator

(1) The Court may make any order it thinks appropriate where it is satisfied that—

(a) an administrator's or a deed administrator's management of the company's business, property, or affairs is prejudicial to the interests of some or all of the company's creditors or shareholders; or

(b) an administrator's or a deed administrator's conduct or proposed conduct has been or is or will be prejudicial to those interests.

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

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

(b) the Director.

284. Order to remedy default

(1) The Court may order an administrator or deed administrator to remedy his default.

(2) An order may be made under this section where—

(a) the administrator or deed administrator 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 14 days after service on him of a notice by a shareholder or creditor of the company in administration requiring that the default be remedied; or

(b) the administrator or deed administrator 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 his receipts and payments as administrator or deed administrator; 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 subsection (2) (a);

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

(c) the Director.

285. Court's power when office of administrator or deed administrator vacant

(1) The Court may make any order it thinks appropriate where it is satisfied that—

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

(b) in the case of a deed of company arrangement that is still in force, the office of the deed administrator is vacant or no deed administrator is acting.

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

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

(b) the Registrar of Companies or the Director.

286. Prohibition order

(1) The Court shall make a prohibition order in relation to a person where it is shown to the satisfaction of the Court that that person is unfit to act as administrator or deed administrator by reason of persistent failure to comply or the seriousness of a failure to comply.

(2) The period of the order is a matter for the discretion of the Court and the Court may make a prohibition order for a period of up to 5 years.

(3) A person to whom a prohibition order applies must not act as an Insolvency Practitioner.

(4) The Court may make an order under this section in relation to a past or current administrator or deed administrator 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 deed administrator of the company;

(d) the Director; or

(e) any other interested person.

(5) (a) In this section, "failure to comply" means a failure of an administrator or deed administrator to comply with a relevant duty arising—

(i) under this Act or any other enactment; or

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

(b) In paragraph (a), "relevant duty" includes the duty of a person in his capacity as liquidator of a company.

(6) A copy of every order made under subsection (1) shall, within 10 working days of the order being made, be delivered by the applicant to the Director who shall keep it on a file indexed by reference to the name of the administrator or deed administrator concerned.

Section I – Notices about steps taken

287. Notice of appointment

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

(a) before the end of the next working day after appointment, lodge a notice of the appointment with the Registrar of Companies and the Director;

(b) not later than 3 working days (not including any Saturday or public holiday) after appointment, publish a notice of the appointment in the *Gazette*; and

(c) as soon as practicable, and in any event not later than the end of the next working day after appointment, give written notice of the appointment to—

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

(ii) each person who holds 2 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 company's property.

(2) A secured creditor who appoints an administrator under section 215 shall give written notice of the appointment to the company as soon as practicable and in any event before the end of the next working day.

288. Notice of execution of deed of company arrangement

As soon as practicable after a deed of company arrangement is executed, the deed administrator shall—

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

(b) publish the notice in a daily newspaper; and

(c) file a copy of the deed with the Registrar of Companies and the Director.

289. Notice of failure to execute deed of company arrangement

Where a company does not meet the deadline for the execution of a deed of company arrangement, the deed administrator shall as soon as practicable—

(a) publish a notice of the failure in a daily newspaper; and

(b) file a copy of the notice with the Registrar of Companies and the Director.

290. Notice of termination by creditors of deed of company arrangement

Where the creditors terminate a deed of company arrangement, the deed administrator shall as soon as practicable—

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

(b) publish the notice in a daily newspaper; and

(c) file a copy of the notice with the Registrar of Companies and the Director.

291. Notice of fact of administration

(1) A company shall set out, in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company, after the company's name where it first appears—

(a) for as long as the company is in administration, the words "administrator appointed"; and

(b) for as long as a deed of company arrangement is in force, the expression "subject to deed of company arrangement".

(2) The Court may, on an application by the company, exempt the company from the requirement specified in subsection (1) (b).

292. Notice of change of name

(1) A company in administration that changes its name less than 6 months before the appointment of the administrator shall, in any document of the company where its name appears, include also its former name.

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

293. Effect of contravention of Section I

A contravention of this Section shall not affect the validity of anything done under this Section, unless the Court orders otherwise.

Sub-Part V – Prescribed Companies

294. Interpretation of Sub-Part V

In this Sub-part—

"associated person", in relation to a company, means a person who—

(a) is a director of the company;

(b) directly or indirectly controls the management of the company within the meaning of section 5 of the Companies Act;

(c) directly or indirectly owns 20 per cent or more of the issued shares of the company other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital;

(d) is a substantial creditor of the company; or

(e) directly or indirectly controls any such person;

"prescribed company" means a company which, by reason of the nature and scale of its activities, or the number of its employees, has a material impact on the national economy and satisfies the criteria in relation to area of activity, financial size or number of employees which are prescribed.

295. Companies Supervisory Committee

(1) There shall be established for the purposes of this Sub-part a Companies Supervisory Committee, comprising—

(a) one member appointed by the Financial Services Commission;

(b) one member appointed by the Bank of Mauritius;

(c) 3 members from the private sector appointed by the Minister, one of whom shall be a senior officer of a bank, one being an auditor and one being an economist with experience in insolvency matters;

(d) the Registrar of Companies;

(e) the Director or his representative.

(2) The Minister shall appoint one of the members of the Companies Supervisory Committee to be Chairperson of that Committee.

(3) The Companies Supervisory Committee shall meet at such time and place as shall be needed for the purpose of its business as the Chairperson thinks fit.

(4) The Companies Supervisory Committee shall regulate its own proceedings.

296. Objects and conduct of Companies Supervisory Committee

(1) The objects of the Companies Supervisory Committee shall be to—

(a) review the activities of prescribed companies and receive reports on such companies from the Insolvency Service with a view to considering whether any notice should issue to a prescribed company requiring the company, related company and associated person to consult with the Director and consider whether to provide advice or assistance to such companies and, where appropriate, appoint an administrator in order to preserve the company as a going concern in the public interest;

(b) take steps by way of the issue of directions on the appointment of an administrator of a prescribed company, where reasonably practicable, to rehabilitate prescribed companies that are encountering financial difficulty and preserve, to the extent reasonably practicable, the business of the company, whether in its existing or some re-organised form, as a going concern and thereby minimise the effect of a corporate collapse on the general economy of Mauritius; and

(c) develop objectives, policies and priorities for the promotion of a healthy corporate sector in Mauritius, and in particular to promote the health and financial success and survival of companies, and in particular prescribed companies and to make recommendations to the Minister.

(2) Every member of the Companies Supervisory Committee shall be paid out of the Consolidated Fund such fees and expenses as may be approved by the Minister.

(3) The Insolvency Service shall make available to the Companies Supervisory Committee such secretarial services and other facilities of the Insolvency Service as the Committee may need to enable it to attain its objects.

(4) The Director may share information with, and provide reports and recommendations to, the Companies Supervisory Committee for the purposes of the Committee's function under this Sub-part.

297. Notice to prescribed company

(1) Where the Director has reasonable ground to suspect that a prescribed company is experiencing financial difficulty, or is encountering other serious prejudice to its ability to honour its financial obligations, the

Director may, after consulting with and receiving the approval of the Companies Supervisory Committee, give written notice to the company and to any related company of that company stating that it is a company on notice under this Sub-Part.

(2) The Director may take action under subsection (1) where—

(a) a resolution has been passed by the directors of a company under section 162 of the Companies Act;

(b) the directors or shareholders of a company resolve to seek the assistance of the Companies Supervisory Committee; or

(c) a report is given by the auditor of the company on its financial statements which reasonably indicates that the company is experiencing financial difficulty.

(3) Every notice given under subsection (1) shall state the grounds on which it is given.

(4) A notice given under subsection (1) shall be deemed to have been given upon delivery to the head office, registered office or principal place of business in Mauritius of the company or related company as the case may be.

(5) A notice given under subsection (1) may at any time be amended or revoked by the Director with the approval of the Companies Supervisory Committee.

298. Obligation to consult with Director

(1) Every prescribed company to which a notice is given under section 297 shall forthwith consult with the Director as to—

(a) the circumstances, including financial circumstances, of that company; and

(b) the way in which the difficulties of that company may be resolved.

(2) Every related company of a company to which a notice has been given under section 297 or any officer or employee or associated person of that company, shall, when required to do so by the Director by notice in writing, forthwith consult with the Director as to—

(a) the circumstances, including the financial circumstances of that company; and

(b) the way in which the difficulties of that company may be resolved.

299. Director may require information

The Director may, by notice in writing to a prescribed company or a related company of that company or an officer or employee or associated person of either of those companies to whom a notice has been given under section 297, requiring that company or related company or officer or

employee or associated person to supply to the Director such information relating to the business, operation or management of that company for such periods and in such form as may be specified in the notice.

300. Director may require creditor or supplier to consult

The Director may, by notice in writing to a creditor or supplier of goods or services to a prescribed company or a related company to which a notice has been given under section 297 requiring that creditor or supplier to consult with the Director as to the way in which the difficulties of that prescribed company or related company may be resolved, and to provide to the Director information relating to the state of account between that creditor or supplier and the prescribed company or related company, the level on circumstances of any indebtedness, and the terms and conditions of any contract or terms of trade with the prescribed company or related company.

301. Director may be required to report to Companies Supervisory Committee

The Companies Supervisory Committee may require the Director to conduct further inquiries and report on any consultations conducted by him and on such matters as the Companies Supervisory Committee may direct, and may seek from the Director recommendations on the way in which the difficulties of the prescribed company and any related company may be resolved.

302. Advice and assistance

Where a notice has been given to a prescribed company or related company under section 297, the Companies Supervisory Committee may itself, or at its request through the Director—

(a) give advice and assistance in connection with the negotiation of any sale or other disposition of the capital or business undertaking of that prescribed company or related company;

(b) give advice and assistance in connection with any scheme for resolving the difficulties of that company or related company; or

(c) appoint an independent advisor to work with the prescribed company or related company or associated person of those companies to address any difficulties of the companies in accordance with any directions or plan of action that may be identified by the Companies Supervisory Committee and to report to the Companies Supervisory Committee.

303. Companies Supervisory Committee may appoint administrator

(1) The Companies Supervisory Committee may, at the request of a prescribed company, or on its own initiative, by notice in writing to the prescribed company and any related company named in the notice, appoint an administrator under Sub-part IV to the prescribed company and to any related company named in the notice.

(2) The Companies Supervisory Committee shall, before appointing an administrator on the exercise of its own initiative, first be satisfied that the making of such an appointment is in the public interest and that—

(a) the prescribed company or related company is unable or unlikely to be able to pay its debts or fulfill its obligations to its creditors;

(b) the survival of the prescribed company or related company and the whole or any part of its or their assets as a going concern is reasonably capable of being achieved;

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

(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 prescribed company or any related company.

(3) An administrator appointed by the Companies Supervisory Committee shall be appointed and hold office as an administrator under Sub-part IV in all respects as if appointed an administrator by the Court under section 215 and Sub-part IV shall apply as if the administrator were an administrator appointed under that Sub-part by the Court.

(4) The references in sections 215, 218, 219 and 221 to the Court shall be read, in the case of each section, and so far as applicable, as if the reference to the Court were a reference to the Companies Supervisory Committee.

PART IV – PROVISIONS APPLICABLE TO BANKRUPTCY AND WINDING UP

Sub-Part I – Interpretation of Part IV

304. Interpretation of Part IV

In this Part—

"debtor" means—

(a) a person who is adjudicated bankrupt; or

(b) a company in the course of being wound up by the Court or by way of a creditors' voluntary winding up.

Sub-Part II – Proof of Debt

305. Provable debt and proof of debt

(1) A provable debt is a present, future, certain or contingent debt or liability which a creditor may prove in a bankruptcy or a winding up and that a debtor owes—

(a) at the time of adjudication or in the case of a company on the commencement of the winding up; or

(b) after adjudication but before discharge or in the case of a company after the commencement of the winding up and before dissolution,

by reason of an obligation incurred by the debtor before adjudication or dissolution as the case may be.

(2) A fine, penalty, order for restitution, or other order for the payment of money that has been made following a conviction for an offence—

(a) is not a provable debt; and

(b) is not discharged when the debtor, in the case of bankruptcy, is discharged from bankruptcy.

(3) A proof of debt is the document that a creditor submits, to the Official Receiver in the case of a bankruptcy or to a liquidator in the case of a company winding up, for the purpose of proving the debt.

(4) A debt is proved when a decision is made by the Official Receiver or liquidator to admit the debt in accordance with the Second Schedule as being a debt provable in the bankruptcy.

306. Procedure for proving debts

(1) The Second Schedule shall govern the manner in which a proof of debt is to be submitted and is to be examined and the procedure to be followed in relation to the proving of debts, including the options available to a secured creditor and the procedure to be followed by a secured creditor.

(2) The proof shall also comply with such other requirement as may be prescribed.

(3) The creditor shall bear the costs of proving the debt, unless the Court makes an order directing that the bankrupt's estate or company in winding up is to pay the creditor's costs.

307. Uncertain proof

(1) Where a proof is subject to a contingency, or is for damages, or where for some other reason the amount of the proof is uncertain, the Official Receiver or liquidator may estimate the amount of the proof.

(2) The Court shall determine the amount of an uncertain proof on the application of—

(a) the Official Receiver or liquidator, where the Official Receiver or liquidator chooses not to estimate the amount; or

(b) a creditor, where the Official Receiver or liquidator has estimated the amount and the creditor is aggrieved by the estimate.

308. Proof of debt payable 6 months or more after adjudication or winding up

(1) A proof of a debt that would, but for a bankruptcy or a liquidation, be payable 6 months or more after the date of adjudication or winding up, is treated as a proof for the present value of the debt.

(2) The present value of the debt is calculated by deducting interest at the prescribed rate for the period from the date of adjudication or winding up to the date when the debt would be payable.

309. Mutual credit and set-off

(1) Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor and another person—

(a) an account shall be taken of what is due from one party to the other in respect of those credits, debts or dealings;

(b) an amount due from one party to the other shall be set off against an amount due from the other party; and

(c) only the balance of the account may be proved in a bankruptcy or a liquidation, or is payable to the Official Receiver or liquidator, as the case may be.

(2) A person, other than a related person, is not entitled under this section to claim the benefit of a set-off arising from—

(a) a transaction made within the specified period, being a transaction by which the person gave credit to the debtor or the debtor gave credit to the person; or

(b) the assignment within the specified period to that person of a debt owed by the debtor to another person,

unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the debtor was unable to pay his or its debts as they became due.

(3) A related person is not entitled under this section to claim the benefit of a set-off arising from—

(a) a transaction made within the restricted period, being a transaction by which the related person gave credit to the debtor or the debtor gave credit to the related person; or

(b) the assignment within the restricted period to that person of a debt owed by the debtor to another person,

unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the debtor was unable to pay his or its debts as they became due.

(4) This section does not apply to an amount paid or payable by a shareholder—

(a) as the consideration, or part of the consideration, for the issue of a share; or

(b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.

(5) In this section—

"related person" means—

(a) a related company; and

(b) includes a director of a company in liquidation;

"restricted period" means the period of 2 years before the date of an adjudication or the commencement of a winding up;

"specified period" means the period of 6 months before the date of an adjudication or the commencement of a winding up.

310. Interest on claims

(1) The amount of a claim may include interest up to the date of the adjudication or the commencement of the winding up—

(a) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or

(b) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) Where any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of adjudication or commencement of the winding up to the date on which each claim is paid, and where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) Where any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1) from the date of adjudication or the commencement of the winding up to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subsection (1) (a) or subsection (1) (b), as the case may be, and, where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

Sub-Part III – Disclaimer

311. Power to disclaim onerous property

(1) Subject to section 312, the Official Receiver or a liquidator may disclaim onerous property even though the Official Receiver or liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(2) A disclaimer under this section—

(a) brings to an end on and from the date of the disclaimer the rights, interests and liabilities of the company in relation to the property disclaimed; but

(b) does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.

(3) The Official Receiver or a liquidator who disclaims onerous property shall, within 28 days of the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the Official Receiver or liquidator, affected by the disclaimer.

(4) A person suffering loss or damage as a result of a disclaimer under this section may—

(a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of an order made by the Court under subsection (4) (b); or

(b) apply to the Court for an order that the disclaimed property be given to or vested in that person.

(5) The Court may make an order under subsection (4) (b) where it is satisfied that it is just that the property should be vested in the applicant.

(6) For the purposes of this section, "onerous property" means—

(a) an unprofitable contract; or

(b) property of a company which is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

312. Requirement to elect whether to disclaim

Where a person whose rights would be affected by a disclaimer of onerous property gives the Official Receiver or the liquidator, notice in writing requiring the Official Receiver or the liquidator to elect, before the close of such date as is stated in the notice, not being a date that is less than 28 days after the date on which the notice is received by the Official Receiver or liquidator, whether to disclaim the onerous property, the Official Receiver or liquidator is not entitled to disclaim the onerous property unless he does so before the close of that date.

Sub-Part IV – Voidable Transaction

313. Voidable preference

(1) A transaction by a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where it—

(a) is a voidable preference; and

(b) was made within 2 years immediately before adjudication or commencement of the winding up.

(2) (a) Voidable preference is a transaction by the debtor that—

(i) is made at a time when the debtor is unable to pay his due debts; and

(ii) enables another person to receive more towards satisfaction of a debt by the debtor than that person would receive, or would be likely to receive, in the bankruptcy or liquidation.

(b) "Transaction" in paragraph (a) means any of the following steps by the debtor—

(i) conveying or transferring the debtor's property;

(ii) creating a charge over the debtor's property;

(iii) incurring an obligation;

(iv) undergoing an execution process;

(v) paying money (including money paid in accordance with a judgment or an order of a Court); or

(vi) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

(3) For the purposes of subsection (1), a transaction that is made within 6 months immediately before the debtor's adjudication or the commencement of the winding up is presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts.

(4) Where—

(a) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor (including a relationship to which other persons are parties); and

(b) in the course of the relationship, the level of the debtor's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship,

then—

(i) subsection (1) applies in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

(ii) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction voidable by the Official Receiver or liquidator where the effect of applying subsection (1) in accordance with subsection paragraph (b) (i) is that the single transaction referred to in paragraph (b) (i) is taken to be an insolvent transaction voidable by the Official Receiver or liquidator.

314. Voidable charge

(1) A charge over any property or undertaking of a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(a) the charge was given within 2 years immediately before the date of the debtor's adjudication or the commencement of the winding up; and

(b) immediately after the charge was given, the debtor was unable to pay his or its due debts.

(2) A charge given by a debtor under an agreement to give the charge that was made before the period of 2 years immediately before the date of adjudication or the commencement of the winding up may not be set aside under subsection (1).

315. Charge or security for new consideration

(1) A charge may not be set aside under section 314 where the charge secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the chargeholder to the debtor at the time when, or at any time after, the charge was given.

(2) A charge or security may not be set aside under section 314 where the charge is a substitute for an existing charge that was given by the debtor more than 2 years before the date of adjudication or the commencement of the winding up, except to the extent that—

(a) the amount secured by the substituted charge is greater than the amount that was secured by the existing charge; or

(b) the value of the property subject to the substituted charge at the date of substitution was greater than the value of the property subject to the existing charge at that date.

316. Presumption that debtor unable to pay due debts

A debtor who gives a charge within 6 months immediately before the date of adjudication or the commencement of the winding up is presumed, unless the contrary is proved, to have been unable to pay his or its due debts immediately after giving the charge.

317. Security for unpaid purchase price given after sale of property

Where a debtor, after purchasing property, has within 2 years immediately before the date of adjudication or the commencement of the winding up given the seller a charge over the property, section 314 shall not affect the charge to the extent that it charges or secures unpaid purchase money, whether it is unpaid in relation to the property over which the charge is given or some other property, or the charge was given not more than 21 days after the date of the sale of the property to the debtor.

318. Appropriation of payment by debtor to charge holder

(1) Where a debtor has made a payment to a charge holder after the debtor has given a charge to which section 314 or 316 applies, the debtor's payment shall be credited as far as is necessary towards—

(a) repayment of the money actually advanced or paid by the charge holder to the debtor when or after the debtor gave the charge;

(b) payment of the actual price or value of property sold by the charge holder to the debtor when or after the debtor gave the charge; or

(c) payment of any other liability of the debtor to the charge holder, including in respect of any other valuable consideration given in good faith when or after the debtor gave the security.

(2) Nothing in this section applies to any payment received by a bank in good faith in the ordinary course of business and without negligence.

319. Alienation of property with intent to defraud a creditor

(1) Subject to subsection (2), every alienation of property made by a debtor within 5 years immediately before the date of adjudication or the commencement of the winding up of the debtor with intent to defraud a creditor may be set aside by the Court on the application of the Official Receiver or a liquidator.

(2) This section shall not apply to any estate or interest in property alienated to a purchaser in good faith not having at the time of the alienation notice of the intention to defraud any creditor.

(3) Nothing in this section shall limit or affect any remedy or right available to a creditor under article 1167 of the Code Civil Mauricien.

320. Voidable gift

(1) A gift by a debtor to another person may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(a) the debtor made the gift within 2 years immediately before the date of adjudication or the commencement of the winding up; and

(b) the debtor was unable to pay his or its due debts immediately after making the gift.

(2) A gift that is made within 6 months immediately before the date of the debtor's adjudication or the commencement of the winding up is presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his or its due debts.

321. Procedure for setting aside voidable transaction

(1) The procedure set out in this section applies to—

(a) a voidable preference;

(b) a voidable charge;

(c) an alienation of property with intent to defraud a creditor; and

(d) a voidable gift.

(2) To initiate the setting aside of a voidable transaction to which this section applies, the Official Receiver or liquidator shall, as soon as practicable, serve a notice that meets the requirements set out in subsection (3) on—

(a) the other party to the transaction; and

(b) any other party from whom the Official Receiver or liquidator intends to recover.

(3) The notice shall—

(a) be in writing;

(b) state the Official Receiver's or liquidator's address;

(c) specify the voidable transaction to be set aside;

(d) describe the property or state the amount that the Official Receiver or liquidator wishes to recover;

(e) state that the person named in the notice may object to the setting aside of the transaction if that person sends a written notice of objection to the Official Receiver or liquidator within 28 days after the notice has been served on that person; and

(f) state that the transaction will be set aside as against the person named in the notice if that person does not object.

(4) A voidable transaction is automatically set aside as against a person named in the notice if that person has not objected, by the sending of a notice by the Official Receiver or liquidator to the person not later than 5 working days after the expiry of the time limit specified in subsection (3) (e).

(5) A notice of objection shall state the reasons for objecting.

(6) The Court may, on the application of the Official Receiver or liquidator, set aside the voidable transaction in any case where a person named in the notice has given a notice of objection under subsection (4).

322. Court may order retransfer or payment

(1) On the setting aside of a voidable transaction, the Court may make an order for—

(a) the retransfer to the Official Receiver or liquidator of any property of the debtor, or any interest in that property, that was transferred under the transaction; or

(b) payment to the Official Receiver or liquidator of a sum of money that the Court thinks appropriate, but the sum must not be greater than the value of the property when the transaction was set aside.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) is in addition to any other right and remedy available to the Official Receiver or liquidator.

323. Limits on recovery

The Court shall not make an order setting aside a transaction under section 321 against a person where the person proves that, when he received the property—

(a) he acted in good faith;

(b) a reasonable person in his position would not have suspected that the debtor was, or would become, unable to pay his due debts; and

(c) he gave value for the property or altered his position in the reasonably held belief that the transfer of the property to him was valid and would not be set aside.

324. Transaction with debtor for inadequate or excessive consideration

(1) Where, within the specified period, a debtor has acquired a business or property from, or the services of—

(a) a person who was, at the time of the acquisition, a nominee or relative of or a trustee for, or a trustee for a relative of the debtor, or in the case of a debtor that is a company, a director of the company;

(b) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the acquisition, had control of the company;

(c) in the case of a debtor that is a company, another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of a director of the company; or

(d) in the case of a debtor that is a company, another company that was, at the time of the acquisition, a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property or services at the time of the acquisition.

(2) Where, within the specified period, a debtor has disposed of a business or property, provided a guarantee or services, or, in the case of a debtor that is a company, has issued shares, for the benefit of—

(a) a person who was, at the time of the disposition, provision or issue a nominee or relative of or a trustee for or a trustee for a relative of the debtor or in the case of a company, a director of the company;

(b) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the disposition, provision or issue, had control of the company;

(c) in the case of a debtor that is a company, another company that was, at the time of the disposition, provision or issue, controlled by a director of the company or a nominee or relative of or a trustee for or a trustee for a relative of a director of the company; or

(d) in the case of a debtor that is a company, another company that, at the time of the disposition, provision or issue, was a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the business, property or services, or the value of shares at the time of the disposition, provision or issue exceeded the value of any consideration received by the debtor.

(3) For the purposes of this section—

(a) the value of a business or property includes the value of any goodwill attaching to the business or property;

(b) section 5 of the Companies Act applies with such modifications as may be necessary to determine control of a company; and

(c) "specified period" means the period of 2 years before the date of adjudication or commencement of the winding up.

325. Court may order recipient to pay value

(1) On the application of the Official Receiver or a liquidator, the Court may order the recipient of a contribution by the debtor to the recipient's property to pay the value of the contribution to the Official Receiver or liquidator.

(2) The Court may make an order under subsection (1) where—

(a) the debtor was not paid an adequate amount in money or money's worth for the contribution;

(b) the value of the debtor's assets was reduced by the contribution; and

(c) the debtor made the contribution—

(i) within 2 years immediately before the date of adjudication or commencement of the winding up; or

(ii) within 5 years immediately before the date of adjudication or commencement of the winding up and the recipient is not able to prove that the debtor, either at the time of the contribution or at any later time before the date of adjudication or commencement of the winding up, was able to pay the debtor's debts without the aid of the contribution.

(3) For the purposes of this section and section 326, a debtor has made a contribution to the recipient's property where he has—

(a) erected buildings on, or otherwise improved, land or any other property of the recipient;

(b) bought land or property in the recipient's name;

(c) provided money to buy land or other property in the recipient's name or on the recipient's behalf; or

(d) paid instalments for the purchase of, or towards the purchase of, any land or any other property in the recipient's name or on the recipient's behalf.

326. Court's power in relation to debtor's contribution

(1) The Court may ascertain the value of a debtor's contribution (including any payment of legal expenses, interest, rates, and other expenses or charges) for the purposes of section 325 and order the recipient to pay it to the Official Receiver or liquidator.

(2) The Court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, where—

(a) the recipient acted in good faith and has altered his or its position in the reasonably held belief that the debtor's contribution was valid and that the recipient would not be liable to repay it in full or in part; or

(b) in the Court's opinion, it is unfair that the recipient should repay all or part of the contribution.

(3) Where the Court orders that the recipient shall repay a debtor's contribution, the Court may also, in the same or a subsequent order—

(a) direct the Official Receiver or liquidator to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and

(b) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

327. Use of repayment of debtor's contribution to property

The Official Receiver or the liquidator shall use money repaid under section 326 by the recipient of a contribution by the debtor to property, or the proceeds of the sale of the property, as the case may be, by taking the following steps in order—

(a) first, the Official Receiver or liquidator shall keep as much of the proceeds as the Official Receiver or liquidator needs, when added to the other assets in the debtor's estate, to pay the creditors in full including interest;

(b) second, if there is a surplus after the creditors have been paid in full, the Official Receiver or liquidator shall pay as much of the surplus to the recipient of the property to which the debtor has contributed as the Official Receiver or liquidator first retained; and

(c) third, the Official Receiver or liquidator shall not pay any sum to the debtor before the Official Receiver or liquidator has taken the steps in paragraphs (a) and (b).

Sub-Part V – Distribution of Assets

328. Priority of payments for distribution of debtor's assets

(1) The Official Receiver or a liquidator shall, subject to subsection (1A), pay, out of the money received by him by the realisation of the property of a debtor, the preferential claims set out in the Fourth Schedule to the extent and in the order of priority specified in that Schedule.

(1A) (a) Any amount withheld pursuant to section 102, or deducted pursuant to section 111J, of the Income Tax Act or any amount of tax due and payable pursuant to section 42 of the Value Added Tax Act shall, to the extent that they remain unpaid to the Director-General of the Mauritius Revenue Authority, not form part of the property of the debtor under subsection (1).

(b) The Official Receiver or a liquidator shall—

(i) set aside, out of any money received by him on behalf of the debtor, any amount referred to in paragraph (a); and

(ii) before payment of any preferential claim referred to in subsection (1), remit to the Director-General of the Mauritius Revenue Authority the amount set aside under subparagraph (i).

(2) Subject to section 329, the priorities set out in the Fourth Schedule shall apply without inscription to the distribution in the case of an adjudication or winding up notwithstanding any provisions with regard to privilege and priority of claims in the Code Civil Mauricien and in section 141 of the Income Tax Act.

(3) The Court may, on the application of the Official Receiver or a liquidator or any affected creditor, order the erasure of any inscription by the Conservator of Mortgages where it appears that the creditor who has taken the inscription is not entitled to priority over the chirograph creditors of the debtor.

(4) After paying the preferential claims in accordance with subsection (1), the Official Receiver or the liquidator shall pay any remaining money to the general creditors in accordance with section 329.

(5) After paying the general creditors in accordance with subsection (4), the Official Receiver or the liquidator shall pay any remaining money to the debtor in accordance with section 330.

(6) In the case of a company in winding up, the liquidator, after paying the general creditors in accordance with subsection (4), shall distribute the company's surplus assets—

(a) in accordance with the provisions of the company's constitution; or

(b) where the company's constitution does not contain any provision for the distribution of surplus assets or the company does not have a constitution, to shareholders rateably.

(7) Any money received by the Official Receiver or liquidator by the realisation of the property of the debtor that cannot be paid in accordance with subsections (1) to (6) shall be paid into the Insolvency Surplus Account.

(8) A secured creditor, other than the holder of a *gage* shall—

(a) pursuant to sections 29 (3) (b) and 154 (2), have power to take possession of, realise and otherwise deal with property over which the secured creditor has a charge; and

(b) hold and retain from any property or proceeds of realisation of property sufficient funds, or value of property to discharge any prior claims specified in the Fourth Schedule, such funds or property to be held on trust under the Trusts Act or otherwise for the benefit of the Official Receiver or liquidator, and the secured creditor shall pay the amount of any such prior claims to the Official Receiver or liquidator.

(9) For the avoidance of doubt, it is declared that except as expressly provided in this Act, nothing in Parts II to IV of this Act shall affect the power of the holder of a *gage* under the Code Civil Mauricien to realise or otherwise deal with his security outside of bankruptcy or winding up in the same manner as he would be entitled to realise and deal with it apart from Parts 2 to 4 of this Act.

[S. 328 amended by s. 28 (d) of Act 9 of 2015 w.e.f. 14 May 2015.]

Sub-Part VI – Payments to general Creditors and Debtor

329. Payment of remaining money to general creditors

(1) After paying preferential claims in accordance with section 328 (1), the Official Receiver or a liquidator shall apply the money received by him by the realisation of the property of the debtor, in satisfaction of all other claims.

(2) The preferential claims referred to in subsection (1) rank equally among themselves and must be paid in full, unless the money is insufficient to meet them, in which case they abate in equal proportions, and interest shall be paid on such claims to the extent and in the manner provided for in section 310.

(3) Where, before the date of adjudication, or commencement of the winding up, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.

(4) Distribution and payment to general creditors shall be made by way of declaration of dividends under sections 331 to 334.

330. Payment of surplus to debtor

After paying the claims referred to in section 329, the Official Receiver or a liquidator shall, subject to section 327, pay any surplus to the debtor.

331. Declaration of dividends

(1) After payment of all preferential claims subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the Official Receiver or a liquidator shall, for the purposes of section 329, with all convenient speed, declare and distribute, in the prescribed manner, dividends among the creditors who have proved their debts to his satisfaction.

(2) Any dividend declared by the Official Receiver or liquidator shall, subject to this section, consist of all money in his hands at the time of the declaration of the dividend.

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(3) The first dividend, if any, shall be declared and distributed within 6 months after the appointment of the Official Receiver or a liquidator, unless the Official Receiver or liquidator, after consulting the committee of inspection (if any), is satisfied that there is sufficient reason for postponing the declaration of the dividend to a later date.

(4) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than 6 months.

332. Right of personal creditors of partners

(1) The personal estate of every partner of a partnership shall accrue and be paid to the personal creditors of that partner, and the creditors of the partnership shall not receive any dividend out of the separate estate of that partner, until all the creditors of the latter have received the full amount of their respective debts.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts.

(3) Where there is a surplus of the separate estates, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Where there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(5) For the purposes of this section, the respective estates of the partnership and of each partner shall be administered together by the Official Receiver (the joint estate), but separate accounts shall be kept by the Official Receiver in relation to each estate.

333. Right of creditor who has proved debt late

Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the Official Receiver or liquidator any dividend he may have failed to receive before the money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved on the ground that he has not participated in it.

334. Final dividend

(1) Where the Official Receiver or a liquidator has converted into money all the property of a debtor, or so much of it as can, in the joint opinion of himself and of any committee of inspection, be realised without needlessly protracting the bankruptcy or liquidation, he shall declare a final dividend, and give notice to the creditors whose claims have been rejected by him, that if such claims are not admitted by the Court within such period as may be fixed by the Court, he will proceed to declare a final dividend without regard to their claims.

(2) After the expiry of the period referred to in subsection (1), or where the Court, on application by any creditor, grants him further time for establishing his claim, then on the expiry of such further time, the final dividend shall be distributed among the creditors who have proved, without regard to the claim of any other person.

(3) Where the Court admits any claim which may have been rejected by the Official Receiver or a liquidator, the holder of the claim shall be entitled to be paid out of all available property in the hands of the Official Receiver or liquidator, any dividend to which he would have been entitled if his claim had not been rejected by the Official Receiver or liquidator.

(4) No action or suit for a dividend shall lie against the Official Receiver or a liquidator, but if the Official Receiver or liquidator refuses to pay any dividend the Court may, if it thinks fit, order the Official Receiver or liquidator to pay the dividend, and also to pay out of his own money interest on it for the time that it is withheld, and the costs of the application.

335. Definition of undistributed money

In sections 336 and 337, undistributed money means any money that—

(a) was received by the Official Receiver or a liquidator by the realisation of the property of a debtor; and

(b) is required to be paid to any person under sections 328 to 334 but cannot be distributed for any reason.

336. Undistributed money

(1) The Official Receiver or a liquidator shall, on termination of the bankruptcy or liquidation, pay any undistributed money into the Insolvency Surplus Account.

(2) The Official Receiver or a liquidator must hold any undistributed money paid into the Insolvency Surplus Account subject to the claim of any person who appears to be entitled to that money.

(3) After the expiry of 12 months from the date on which undistributed money is paid into the Insolvency Surplus Account, the Official Receiver or liquidator shall, notwithstanding any other enactment, transfer any undistributed money that has not been claimed by a person into the general fund of the Insolvency Surplus Account.

(4) Undistributed money transferred into the general fund of the Insolvency Surplus Account—

(a) is deemed to be one common and general fund; and

(b) may be applied without discrimination in accordance with section 337.

337. Application of general fund

(1) Funds held in the general fund of the Insolvency Surplus Account may be used—

(a) for distribution, in relation to the bankruptcy or liquidation from which the undistributed money came, to any person who remains to be paid as set out in section 336 (2);

(b) for the purposes of this Act, to the extent and in the manner allowed by this Act;

(c) to replace, to the extent of the deficiency, any money misappropriated by an Official Receiver or liquidator or any person employed under the provisions of this Act; and

(d) to meet the costs of any investigation into the .circumstances of the insolvency, or of any Court proceedings, obtaining legal advice, or employing an accountant or other expert in circumstances where the Official Receiver determines that the creditors of a bankrupt or company are unable to pay those costs, or it would be unfair or inequitable that they should do so and it is in the interest of creditors and the public interest to meet these costs from the Insolvency Surplus Account.

(2) The allocation of funds for the purposes of subsection (1) (d) shall be in the discretion of the Official Receiver and application may be made to him by any liquidator for that purpose.

(3) The Official Receiver may appoint a committee formed from experienced Insolvency Practitioners to assist him in the administration of the Insolvency Surplus Account.

PART V – NETTING ARRANGEMENTS IN FINANCIAL CONTRACTS

Sub-Part I – Interpretation of Part V

338. Interpretation of Part V

(1) In this Part—

"account agreement", in relation to a securities account, means the agreement with the relevant intermediary governing that securities account;

"account holder" means a person in whose name an intermediary maintains a securities account;

"branch or agency net payment entitlement", with respect to a multi-branch netting agreement, means the amount, if any, that would have been owed by the non-insolvent party to the foreign party after netting only those qualified financial contracts entered into by the non-insolvent party with the branch or agency of the foreign party in Mauritius under the multi-branch netting agreement;

"branch or agency net payment obligation" with respect to a multi-branch netting agreement, means the amount, if any, that would have been owed by the foreign party to the non-insolvent party after netting only those qualified financial contracts entered into by the non-insolvent party with the branch or agency of the foreign party in Mauritius under the multi-branch netting agreement;

"cash" means money credited to an account in any currency, or a similar claim for repayment of money, such as a money market deposit;

"collateral" means—

(a) cash in any currency;

(b) securities of any kind, including (without limitation) debt and equity securities;

(c) guarantees, letters of credit and obligations to reimburse; or

(d) any asset commonly used as collateral in Mauritius;

"collateral arrangement" means any margin, collateral or security arrangement or other credit enhancement related to a netting agreement or one or more qualified financial contracts entered into, including—

(a) a pledge or any other form of security interest in collateral, whether possessory or non-possessory;

(b) a title transfer collateral arrangement; and

(c) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial contracts, in respect of those qualified financial contracts;

"Convention" means the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary;

"disposition" means—

(a) any transfer of title whether outright or by way of security; and

(b) any grant of a security interest, whether possessory or non-possessory;

"foreign party" means a party whose home country is not Mauritius;

"global net payment entitlement" means the amount, if any, owed by the non-insolvent party, or that would be owed if the relevant multi-branch netting agreement provided for payments to either party, upon termination of qualified financial contracts under the agreement, under any and all circumstances to the foreign party as a whole after giving effect to the netting provisions of a multi-branch netting agreement with respect to all qualified financial contracts subject to netting under the multi-branch netting agreement;

"global net payment obligation" means the amount, if any, owed by the foreign party as a whole to the non-insolvent party after giving effect to the netting provisions of a multi-branch netting agreement with respect to all qualified financial contracts subject to netting under the multi-branch netting agreement;

"home country" means the country where a party to a netting agreement is organised or incorporated;

"multi-branch netting agreement" means a netting agreement between two parties under which at least one party enters into qualified financial contracts in its home office and one or more of its branches or agencies located in countries other than its home country;

"FSC" means the Financial Services Commission established under the Financial Services Act;

"insolvency proceeding"—

(a) means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the debtor are subject to control or supervision by a Court or other competent authority for the purpose of reorganisation or winding up; and

(b) includes a proceeding for the bankruptcy of an individual or the winding up of a company under this Act;

"insolvency administrator"—

(a) means a person authorised to administer a reorganisation or winding up, including one authorised on an interim basis; and

(b) includes a debtor in possession if permitted by the applicable insolvency law;

"insolvent party" means the party in relation to which an insolvency proceeding under this Act has been instituted;

"liquidator" means the liquidator, receiver, trustee, conservator or other person or entity which administers the affairs of an insolvent party during an insolvency proceeding under this Act;

"multi-branch netting agreement" means a netting agreement between 2 parties under which at least one party enters into qualified financial contracts in its home office and one or more of its branches or agencies located in countries other than its home country;

"multi-unit State" means a State within which 2 or more territorial units of that State, or both the State and one or more of its territorial units, have their own rules of law in respect of any of the issues specified in article 8.1 of the Convention;

"netting" means—

(a) the termination, liquidation or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement;

(b) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated or accelerated under paragraph (a);

(c) the conversion of any values calculated or estimated under paragraph (b) into a single currency; or

(d) the determination of the net balance of the values calculated under paragraph (b), as converted under paragraph (c), whether by operation of set-off or otherwise;

"netting agreement" means—

(a) an agreement between 2 parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement, and entered into;

(b) an agreement between 2 parties that provides for netting of the amounts due under 2 or more agreements referred to in paragraph (a), and entered into; or

(c) any collateral arrangement related to an agreement under paragraph (a) or (b) entered into between the parties,

after or before 15 December 2011;

"non-insolvent party" means a party other than the insolvent party;

"office", in relation to an intermediary—

(a) means a place of business at which any activity of the intermediary is carried on; but

(b) does not include a place of business which is intended to be merely temporary or a place of business of any person other than the intermediary;

"party" means a person constituting one of the parties to a netting agreement;

"perfection" means completion of any steps necessary to render a disposition effective against persons who are not parties to that disposition;

"qualified financial contract"—

(a) means a financial agreement, contract or transaction, including any term or condition incorporated by reference in the agreement, 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; and

(b) includes—

(i) a currency, cross-currency or interest rate swap;

(ii) a basis swap;

(iii) a spot, future, forward or other foreign exchange transaction;

(iv) a cap, collar or floor transaction;

(v) a commodity swap;

(vi) a forward rate agreement;

(vii) a currency or interest rate future;

(viii) a currency or interest rate option;

(ix) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;

(x) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option;

(xi) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;

(xii) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;

(xiii) a weather derivative, such as a weather swap or weather option;

(xiv) a bandwidth derivative;

(xv) a freight derivative;

(xvi) an emissions derivative;

(xvii) an inflation or other economic statistics derivative;

(xviii) a spot, future, forward or other securities or commodities transaction;

(xix) a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement, including any such contract or agreement relating to mortgage loans, interest in mortgage loans or mortgage-related securities;

(xx) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement;

(xxi) a collateral arrangement;

(xxii) an agreement to clear or settle securities transactions or to act as a depository for securities;

(xxiii) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in subparagraphs (i) to (xxii) with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(xxiv) any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in subparagraphs (i) to (xxiii); and

(xxv) any agreement, contract or transaction designated as such by the FSC for the purpose of this Act by notice published in the *Gazette*;

"relevant intermediary" means the intermediary that maintains a securities account for an account holder;

"securities" means any shares, bonds or other financial instruments or financial assets (other than cash), or any interest in any of them;

"securities account" means an account maintained by an intermediary to which securities may be credited or debited;

"securities held with an intermediary" means the rights of an account holder resulting from a credit of securities to a securities account;

"title transfer collateral arrangement" means a margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether by outright sale or by way of security, including a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or an irregular pledge;

"writing" means a record of information, including information communicated by teletransmission, which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion.

(2) A reference in this Part to a disposition of securities held with an intermediary includes—

(a) a disposition of a securities account;

(b) a disposition in favour of the account holder's intermediary; or

(c) a *lien* by operation of law in favour of the account holder's intermediary in respect of any claim arising in connection with the maintenance and operation of a securities account.

(3) (a) "Intermediary", for the purposes of this Part, means a person that in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity.

(b) A person shall not be considered an intermediary for the purposes of this Part merely because—

(i) that person acts as registrar or transfer agent for an issuer of securities; or

(ii) that person records in its own books details of securities credited to securities accounts maintained by an intermediary in the names of other persons for whom it acts as manager or agent or otherwise in a purely administrative capacity.

(c) Subject to paragraph (d), a person shall be regarded as an intermediary for the purposes of this Part in relation to securities which are credited to securities accounts which it maintains in the capacity of a central securities depository or which are otherwise transferable by book entry across securities accounts which it maintains.

(d) In relation to securities which are credited to securities accounts maintained by a person in the capacity of operator of a system for the holding and transfer of such securities on records of the issuer or other records which constitute the primary record of entitlement to them as against the issuer, the FSC may, by notice issued under this paragraph and published in the *Gazette*, make an order that the person who operates that system shall not be an intermediary for the purposes of this Part.

(4) (a) A reference in this Part to the text of the Convention is to the text of the Convention as approved by the member States of the Hague Conference on Private International Law by signature in December 2002, without regard to whether or not the Convention has entered into force.

(b) A reference in this Part to a Contracting State of the Convention is to a State that has ratified, accepted, approved or acceded to the Convention in accordance with Chapter V of the Convention and the reference shall only apply once the Convention has entered into force.

(5) A qualified financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of the Gambling Regulatory Authority Act, the Code Civil Mauricien or any other enactment relating to games, gaming, gambling, wagering or lotteries.

(6) The Financial Services Commission may, by notice issued under this section and published in the *Gazette*, designate as "qualified financial contracts" any agreement, contract or transaction, or type of agreement, contract or transaction, in addition to those listed in this Part.

[S. 338 amended by s. 15 of Act 38 of 2011 w.e.f. 15 December 2011.]

Sub-Part II – Netting Agreement

339. General rule

The provisions of a netting agreement will be enforceable in accordance with its terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by—

(a) any action of the liquidator;

(b) any other enactment relating to bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other insolvency proceeding the insolvent party may be subject to; or

(c) any other enactment that may be applicable to the insolvent party.

340. Limitation on obligation to make payment or delivery

After the commencement of insolvency proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under a netting agreement shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.

341. Limitation on right to receive payment or delivery

After the commencement of insolvency proceedings in relation to a party, the only right, if any, of either party to receive payment or delivery under a netting agreement shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.

342. Limitation on power of liquidator

Any power of a liquidator to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation or acceleration of all payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under or in connection with a netting agreement, and will apply, if at all, only to the net amount due in respect of all of such qualified financial contracts in accordance with the terms of such netting agreement.

343. Limitation of insolvency law prohibiting set-off

The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into will not be affected by section 309 or any other applicable laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.

344. Preference and fraudulent transfer

The liquidator of an insolvent party may not avoid or set aside—

(a) any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or

(b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement,

on the ground of it constituting a preference, a transfer during a suspect period or an onerous contract by the insolvent party to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date the transfer was made or the obligation was incurred.

345. Pre-emption

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a Court, administrative agency, liquidator or otherwise, shall limit or delay application of otherwise enforceable netting agreements in accordance with this Sub-part.

346. Realisation and liquidation of collateral

(1) Unless otherwise agreed by the parties and notwithstanding any other enactment, the realisation, appropriation and/or liquidation of collateral under a collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any party, person or entity.

(2) This section is without prejudice to any applicable law requiring that the realisation, appropriation and/or liquidation of collateral is conducted in a commercially reasonable manner.

347. Scope of Sub-Part II

For the purposes of this Sub-part,—

(a) a netting agreement shall be deemed to be a netting agreement notwithstanding the fact that it may contain provisions relating to agreements, contracts or transactions that are not qualified financial contracts;

(b) a netting agreement shall be deemed to be a netting agreement only with respect to those agreements, contracts or transactions that fall within the meaning given to the term "qualified financial contract";

(c) a collateral arrangement shall be deemed to be a collateral arrangement notwithstanding the fact that it may contain provisions relating to agreements, contracts or transactions that are not a netting agreement or a qualified financial contract;

(d) a collateral arrangement shall be deemed to be a collateral arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "netting agreement" or "qualified financial contract" entered into under them;

(e) a netting agreement and all qualified financial contracts entered into under the netting agreement shall constitute a single agreement;

(f) a "netting agreement" shall include the term "multi-branch netting agreement"; and

(g) in a separate insolvency of a branch or agency of a foreign party in Mauritius, the enforceability of the provisions of the multi-branch netting agreement shall be determined in accordance with Sub-part III.

Sub-Part III – Multi-branch Netting Agreement

348. Limitation on non-insolvent party's right to receive payment

(1) (a) The liability of an insolvent branch or agency of a foreign party or its liquidator in Mauritius under a multi-branch netting agreement shall be calculated as of the date of the termination of the qualified financial contracts entered into under the multi-branch netting agreement in accordance with its terms and shall be limited to the lesser of the global net payment obligation and the branch/agency net payment obligation.

(b) The liability under this section of the insolvent branch or agency of the foreign party or its liquidator shall be reduced by any amount otherwise paid to or received by the non-insolvent party in respect of the global net payment obligation pursuant to such multi-branch netting agreement which if added to the liability of the liquidator under this section would exceed the global net payment obligation.

(2) The liability of the liquidator of an insolvent branch or agency of a foreign party under a multi-branch netting agreement to the non-insolvent party shall be reduced by the fair market value of, or the amount of any proceeds of, collateral that secures or supports the obligations of the foreign party under the multi-branch netting agreement and has been applied to satisfy the obligations of the foreign party pursuant to the multi-branch netting agreement to the non-insolvent party.

349. Limitation on foreign party's right to receive payment

(1) The liability of the non-insolvent party under this section shall be reduced by any amount otherwise paid to or received by the liquidator or any other liquidator or receiver of the foreign party in its home country or any other country in respect of the global net payment entitlement pursuant to such multi-branch netting agreement which if added to the liability of the non-insolvent party under this section would exceed the global net payment entitlement.

(2) The liability of the non-insolvent party under this section to the liquidator pursuant to such multi-branch netting agreement also shall be reduced by the fair market value of, or the amount of any proceeds of, collateral that secures or supports the obligations of the non-insolvent party and has been applied to satisfy the obligations of the non-insolvent party pursuant to such multi-branch netting agreement to the foreign party.

350. Limitation on multi-branch netting agreement relating to collateral arrangement

(1) The non-insolvent party to a multi-branch netting agreement which has a perfected security interest in collateral, or other valid title, *lien* or security interest in collateral enforceable against third parties pursuant to the multi-branch netting agreement, may retain all the collateral and on termination of the multi-branch netting agreement in accordance with its terms apply the collateral in satisfaction of any claims secured by the collateral.

(2) The total amount so applied to those claims shall in no event exceed the global net payment obligation, if any, and any excess collateral shall be returned to the foreign party.

Sub-Part IV – Securities Held with Intermediary

351. Sub-Part IV and applicable law

(1) This Sub-part applies to the following issues in respect of securities held with an intermediary—

(a) the legal nature and effects against the intermediary and third parties of the rights resulting from a credit of securities to a securities account;

(b) the legal nature and effects against the intermediary and third parties of a disposition of securities held with an intermediary;

(c) the requirements, if any, for perfection of a disposition of securities held with an intermediary;

(d) whether a person's interest in securities held with an intermediary extinguishes or has priority over another person's interest;

(e) the duties, if any, of an intermediary to a person other than the account holder who asserts in competition with the account holder or another person an interest in securities held with that intermediary;

(f) the requirements, if any, for the realisation of an interest in securities held with an intermediary; and

(g) whether a disposition of securities held with an intermediary extends to entitlements to dividends, income, or other distributions, or to redemption, sale or other proceeds.

(2) This Sub-part applies in relation to a disposition of or an interest in securities held with an intermediary even if the rights resulting from the credit of those securities to a securities account are determined in accordance with subsection (1) (a) to be contractual in nature.

(3) Subject to subsection (1), this Sub-part does not apply to—

(a) the rights and duties arising from the credit of securities to a securities account to the extent that the rights or duties are purely contractual or otherwise purely personal;

(b) the contractual or other personal rights and duties of parties to a disposition of securities held with an intermediary; or

(c) the rights and duties of an issuer of securities or of an issuer's registrar or transfer agent, whether in relation to the holder of the securities or any other person.

352. Primary rule

(1) The law applicable to all the issues specified in section 351 (1) is the law in force in the State expressly agreed in the account agreement as the State whose law governs the account agreement or, if the account agreement expressly provides that another law is applicable to all those issues, that other law.

(2) The law designated in accordance with subsection (1) applies only if the relevant intermediary has, at the time of the agreement, an office in that State, which—

(a) alone or together with other offices of the relevant intermediary or with other persons acting for the relevant intermediary in that or another State—

(i) effects or monitors entries to securities accounts;

(ii) administers payments or corporate actions relating to securities held with the intermediary; or

(iii) is otherwise engaged in a business or other regular activity of maintaining securities accounts; and

(b) is identified by an account number, bank code, or other specific means of identification as maintaining securities accounts in that State.

(3) For the purposes of subsection (2), an office is not engaged in a business or other regular activity of maintaining securities accounts—

(a) merely because it is a place where the technology supporting the bookkeeping or data processing for securities accounts is located;

(b) merely because it is a place where call centres for communication with account holders are located or operated;

(c) merely because it is a place where the mailing relating to securities accounts is organised or files or archives are located; or

(d) if it engages solely in representational functions or administrative functions, other than those related to the opening or maintenance of securities accounts, and does not have authority to make any binding decision to enter into any account agreement.

(4) In relation to a disposition by an account holder of securities held with a particular intermediary in favour of that intermediary, whether or not that intermediary maintains a securities account on its own records for which it is the account holder, for the purposes of this Act—

(a) that intermediary is the relevant intermediary;

(b) the account agreement between the account holder and that intermediary is the relevant account agreement; or

(c) the securities account for the purposes of section 353 is the securities account to which the securities are credited immediately before the disposition.

353. Fall-back rules

(1) Where the law to be applied is not determined under section 352, but it is expressly and unambiguously stated in a written account agreement that the relevant intermediary entered into the account agreement through a particular office, the law applicable to all the issues specified in section 351 (1) is the law in force in the State, or the territorial unit of a multi-unit State, in which that office was then located, provided that such office then satisfied the condition specified in section 352 (2).

(2) In determining whether an account agreement expressly and unambiguously states that the relevant intermediary entered into the account agreement through a particular office, none of the following shall be considered, namely a provision that—

(a) notices or other documents shall or may be served on the relevant intermediary at that office;

(b) legal proceedings shall or may be instituted against the relevant intermediary in a particular State or in a particular territorial unit of a multi-unit State;

(c) any statement or other document shall or may be provided by the relevant intermediary from that office;

(d) any service shall or may be provided by the relevant intermediary from that office; or

(e) any operation or function shall or may be carried on or performed by the relevant intermediary at that office.

(3) Where the law to be applied is not determined under this section, that law is the law in force in the State, or the territorial unit of a multi-unit State, under whose law the relevant intermediary is incorporated or otherwise organised at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened; but when the relevant intermediary is incorporated or otherwise organised under the law of a multi-unit State and not that of one of its territorial units, the applicable law is the law in force in the territorial unit of that multi-unit State in which the relevant intermediary has its place of business, or, if the relevant intermediary has more than one place of business, its principal place of business, at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened.

(4) Where the law to be applied is not determined under subsection (1), (2) or (3), that law is the law in force in the State, or the territorial unit of a multi-unit State, in which the relevant intermediary has its place of business, or, if the relevant intermediary has more than one place of business, its principal place of business, at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened.

354. Factors to be disregarded

In determining the law to be applied in accordance with this Sub-part, no account shall be taken of—

(a) the place where the issuer of the securities is incorporated or otherwise organised or has its statutory seat or registered office, central administration or place or principal place of business;

(b) the places where certificates representing or evidencing securities are located;

(c) the place where a register of holders of securities maintained by or on behalf of the issuer of the securities is located; or

(d) the place where any intermediary other than the relevant intermediary is located.

355. Protection of rights on change of applicable law

(1) In this section, where an account agreement is amended so as to change the applicable law—

"new law" means the law applicable under this Part after the change;

"old law" means the law applicable under this Part before the change.

(2) Subject to subsection (3), the new law governs all the issues specified in section 351 (1).

(3) Except with respect to a person who has consented to a change of law, the old law continues to govern—

(a) the existence of an interest in securities held with an intermediary arising before the change of law and the perfection of a disposition of those securities made before the change of law;

(b) with respect to an interest in securities held with an intermediary arising before the change of law—

(i) the legal nature and effects of the interest against the relevant intermediary and any party to a disposition of those securities made before the change of law;

(ii) the legal nature and effects of the interest against a person who after the change of law attaches the securities;

(iii) the determination of all the issues specified in section 351 (1) with respect to an insolvency administrator in an insolvency proceeding opened after the change of law;

(c) priority as between parties whose interests arose before the change of law.

(4) Subsection (3) (c) does not preclude the application of the new law to the priority of an interest that arose under the old law but is perfected under the new law.

356. Insolvency

(1) Notwithstanding the commencement of an insolvency proceeding, the law applicable under this Part governs all the issues specified in section 351 (1) with respect to any event that has occurred before the commencement of that insolvency proceeding.

(2) Nothing in this Part shall affect the application of any substantive or procedural insolvency rule, including any rule relating to—

(a) the ranking of categories of claims or the avoidance or setting aside of a disposition as a voidable preference or charge or an alienation with intent to defeat a creditor; or

(b) the enforcement of rights after the commencement of an insolvency proceeding.

Sub-Part V – General

357. General applicability of Part V

This Part applies whether or not the applicable law is that of Mauritius or of a Contracting State of the Convention.

358. Public policy and internationally mandatory rules

(1) The application of the law determined under this Part may be refused only if the effects of its application would be manifestly contrary to the public policy of the forum.

(2) This Part does not prevent the application of those provisions of the law of the forum which, irrespective of rules of conflict of laws, must be applied even to international situations.

(3) This section does not permit the application of provisions of the law of the forum imposing requirements with respect to perfection or relating to priorities between competing interests, unless the law of the forum is the applicable law under this Part.

359. Determination of applicable law for multi-unit States

(1) Where the account holder and the relevant intermediary have agreed on the law of a specified territorial unit of a multi-unit State—

(a) the references to "State" in section 352 (1) are to that territorial unit;

(b) the references to "that State" in section 352 (2) are to the multi-unit State itself.

(2) In applying this Part—

(a) the law in force in a territorial unit of a multi-unit State includes both the law of that unit and, to the extent applicable in that unit, the law of the multi-unit State itself;

(b) where the law in force in a territorial unit of a multi-unit State designates the law of another territorial unit of that State to govern perfection by public filing, recording or registration, the law of that other territorial unit governs that issue.

(3) Where a multi-unit State has, at the time of signature, ratification, acceptance, approval or accession to the Convention, made a declaration under article 12 (3) of the Convention, if, under article 5 of the Convention, the applicable law is that of the multi-unit State or one of its territorial units, the internal choice of law rules in force in that multi-unit State shall determine whether the substantive rules of law of that multi-unit State or of a particular territorial unit of that multi-unit State shall apply.

(4) Where a multi-unit State has, at any time, made a declaration under article 12 (4) of the Convention, if, under article 4 of the Convention or section 352, the applicable law is that of one of its territorial units, the law of that territorial unit applies only if the relevant intermediary has an office within that territorial unit which satisfies the condition specified in section 352 (1).

(5) A declaration referred to in subsection (4) shall have no effect on dispositions made before that declaration becomes effective.

360. Uniform interpretation

In the interpretation of this Part, regard shall be had to its international character and to the need to promote uniformity in its application and the application of the Convention.

361. Priority between interests in respect of securities held with intermediary

In Mauritius, the law applicable under this Part determines whether a person's interest in securities held with an intermediary acquired after the commencement of this Part extinguishes or has priority over another person's interest acquired before the commencement of this Part.

362. Account agreements and securities accounts

(1) References in this Part to an account agreement include an account agreement entered into before the commencement of this Part.

(2) References in this Part to a securities account include a securities account opened before the commencement of this Part.

(3) Unless an account agreement contains an expressed reference to this Part or to the Convention, a Court of Mauritius shall apply subsections (4) and (5) in applying section 352 (2) with respect to account agreements entered into before the commencement of this Part.

(4) Any expressed terms of an account agreement which would have the effect, under the rules of the State whose law governs that agreement, that the law in force in a particular State, or a territorial unit of a particular multi-unit State, applies to any of the issues specified in section 351 (2), shall have the effect that such law governs all the issues specified in section 351 (2), provided that the relevant intermediary had, at the time the agreement was entered into, an office in that State which satisfied the condition specified in section 352 (2) (b).

(5) Where the parties to an account agreement, other than an agreement to which subsection (4) applies, have agreed that the securities account is maintained in a particular State, or a territorial unit of a particular multi-unit State, the law in force in that State or territorial unit is the law applicable to all the issues specified in section 351 (2), provided that the relevant intermediary had, at the time the agreement was entered into, an office in that State which satisfied the condition specified in section 352 (2) (b).

(6) An agreement referred to in subsection (5) may be expressed or implied from the terms of the contract considered as a whole or from the surrounding circumstances.

363. Force of this Part

(1) This Part shall remain in force notwithstanding any other enactment presently in force or enacted at a later date unless expressly amended by that law.

(2) In case of conflict between any provision of this Part and any provision of any other enactment, the provisions of this Part shall prevail.

PART VI – CROSS-BORDER INSOLVENCY

364. Interpretation of Part VI

In this Part—

"insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency (whether personal or corporate) in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise that proceeding, for the purpose of reorganisation or liquidation;

"Model Law" means the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997 and approved by the General Assembly of the United Nations on 15 December 1997.

(S. 364 not in operation.)

365. Further provision relating to interpretation

In interpreting this Part, reference may be made to—

(a) the Model Law;

(b) any document that relates to the Model Law and originates from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law.

(S. 365 not in operation.)

366. Application of Model Law

(1) Before this Part comes into operation, the Minister shall be satisfied that there is sufficient reciprocity in dealing with insolvencies with jurisdictions that have trading or financial connections with Mauritius, or that it is otherwise in the public interest to bring it into operation.

(2) Subject to section 358 (3), the Ninth Schedule applies in the circumstances set out in article 1 of that Schedule.

(S. 366 not in operation.)

367. Power to make rules

The Chief Justice may make rules—

(a) in relation to the practice and procedure of the Court under this Part;

(b) relating to the manner in which an application under the Ninth Schedule shall be made to the Court; and

(c) generally to give effect to this Part.

(S. 367 not in operation.)

368. Power to make regulations

(1) The Minister may make such regulations he thinks necessary for designating a class of insolvency proceedings in a foreign country to be a specified insolvency proceeding and prescribing such matters as may need to be prescribed in relation to those proceedings.

(2) The Minister shall, before making regulations under subsection (1), be satisfied that—

(a) Mauritius and the foreign country are parties to an agreement for the mutual recognition of insolvency proceedings; and

(b) the level of recognition given to the interests of Mauritius' debtors and creditors in an insolvency proceeding in the foreign country and the terms of the agreement referred to in subsection paragraph (a) provide appropriate protection for the interests of debtors and creditors in Mauritius.

(3) Any regulations made under subsection (1) may amend the Ninth Schedule in relation to a specified insolvency proceeding.

(S. 368 not in operation.)

PART VII – INSOLVENCY SERVICE

369. Insolvency Service

(1) There shall be, within the office of the Registrar of Companies, a division to be called the Insolvency Service.

(2) The Registrar of Companies shall assign to the Insolvency Service such staff within his office as he considers to be necessary for the performance of its functions.

(3) The functions of the Insolvency Service shall be to—

(a) keep under review the law and practice relating to the insolvency of individuals, companies and other corporate bodies in Mauritius and make recommendations to the Registrar of Companies on any changes considered to be necessary;

(b) have an overview of the administration of insolvency in Mauritius and in particular the administration of insolvency under this Act;

(c) receive reports from the Official Receiver on the administration of insolvencies and monitor the performance of the Official Receiver and report to the Registrar of Companies on any resourcing or other needs in relation to the effective performance of the Official Receiver's functions;

(d) monitor the performance of prescribed companies and related companies of prescribed companies and report to the Companies Supervisory Committee on the performance and financial stability of such companies and to take such action as is required in that respect;

(e) monitor the performance of Insolvency Practitioners and, where required, make application to the Court for the discipline or removal of an Insolvency Practitioner;

(f) in association with and after conferring with all relevant professional bodies, set rules and provide guidance governing the performance and conduct of Insolvency Practitioners;

(g) in association with all relevant professional bodies, foster the development of training and in-service seminars to enhance the skills and encourage improved standards of performance on the part of Insolvency Practitioners;

(h) carry out research, commission studies, disseminate information and provide public education in the area of consumer credit, budgeting advice and insolvency administration;

(i) 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 furtherance by the Insolvency Service of its functions; and

(j) advise the Minister through the Registrar of Companies generally on any matter relating to the law and practice of insolvency and insolvency administration.

370. Director of Insolvency Service

(1) The Registrar of Companies shall be the Director of the Insolvency Service.

(2) The Director shall be responsible for carrying out the functions of the Insolvency Service and its control and management.

(3) The Director may, from time to time, issue Practice Directions setting out—

(a) the form of notices required to be given to the Director under this Act; or

(b) the procedure to be followed in registering documents or performing any act or thing required to be done under this Act.

(4) Any Practice Directions issued under subsection (3) shall be published in the *Gazette* and shall remain in force unless amended or revoked by publication in the *Gazette.*

[S. 370 amended by s. 14 (b) of Act 27 of 2012 w.e.f. 22 December 2012.]

371. Official Receiver and Deputy Official Receivers

(1) There shall be appointed as officers—

(a) a suitable person to be Official Receiver; and

(b) one or more suitable persons to be Deputy Official Receivers.

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

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

(4) Any Deputy Official Receiver may act on behalf of or in the place of the Official Receiver and whilst so acting shall have all the authority and powers of the Official Receiver.

372. Office and name of Official Receiver

(1) The Official Receiver may sue and be sued in the name of "The Official Receiver of the property of [inserting the name of the bankrupt or of the company which is the subject of a winding up order]", and in that name may do all acts necessary or expedient to be done in the execution of his office.

(2) The Official Receiver or a Deputy Official Receiver may administer oaths and take declarations and may appear in Court and examine a bankrupt or the directors of a company which is the subject of a winding up order or any other person who appears in proceedings under this Act.

(3) The Official Receiver may execute all documents signing his private name under the official name, or may affix a seal to any document, but nothing in this subsection shall prevent the Official Receiver from affixing the seal of his office to any document.

373. Vacation of office of Official Receiver

(1) A person shall not act or continue to act as Official Receiver in relation to the estate of any debtor of which he is a creditor (not being a creditor in the capacity of Official Receiver in the property of any other bankrupt or the liquidator of any company) if the creditors declare by resolution that they do not wish him to act as Official Receiver.

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(2) In any case where such a disqualification occurs, the Registrar of Companies shall appoint a Deputy Official Receiver to be the Official Receiver of that estate.

374. Register of Insolvency Practitioners

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

(2) Every Insolvency Practitioner shall, within 7 days of the date of his appointment, give notice to the Director in the prescribed form of that person's appointment.

(3) (a) Every Insolvency Practitioner who for a period of 6 months has ceased to hold any office as an Insolvency Practitioner shall, within 7 days, give notice of that fact to the Director.

(b) In the event of that person again being appointed as an Insolvency Practitioner, that person shall give notice to the Director under subsection (2).

(4) Every Insolvency Practitioner who is suspended or removed from the practice of accountancy or law or the practice of a company secretary by any professional body in Mauritius or by a comparable professional body outside Mauritius, shall give notice of that fact to the Director within 7 days of the Insolvency Practitioner receiving notice of the suspension or removal from practice.

(5) Where the Director receives notice under subsection (4), or is otherwise advised by the professional body concerned, or 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 the practice of a company secretary, the Director may, where he has reasonable ground to suspect that the person may be unfit to continue to act as an Insolvency Practitioner, after providing the Insolvency Practitioner with an opportunity to be heard, suspend the Insolvency Practitioner from continuing in office as an Insolvency Practitioner pending the making of further inquiries and the making of an application to the Court under section 376 and the making by the Court of a prohibition order pursuant to any of those sections.

(6) The Director 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 subject of a prohibition order by the Court under section 176, 210 or 286;

(b) that the person has been suspended or removed from the practice of accountancy or law or the practice of a company secretary by any professional body in Mauritius or by any comparable body outside Mauritius where the Director 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 Director to remove his name from the register.

(7) Clauses 1, 6 and 7 of the Tenth Schedule, so far as they are applicable, shall apply to the register of Insolvency Practitioners kept under this section.

375. Conduct and performance of Insolvency Practitioners

(1) The Director shall keep under review the conduct and performance of persons appointed to be Insolvency Practitioners and may require any document or information concerning an Insolvency Practitioner to be provided to the Director by the Official Receiver or by the Court or the Registrar of Companies or by any other Insolvency Practitioner or by any person who is or has been an auditor of a company in which the Insolvency Practitioner has held office.

(2) (a) The Director may receive representations from any person on the conduct and performance of an Insolvency Practitioner and shall within 7 days of receiving any such representation disclose the substance of that representation to the Insolvency Practitioner and seek comment on it.

(b) Any representation made to the Director under subsection (2) (a) and any communication of the terms of that representation made in confidence shall be protected by absolute privilege.

(3) Where the Director has reasonable ground to suspect that an Insolvency Practitioner has failed to comply with a provision of this Act in a manner which has or may materially affect creditors or contributories or persons dealing in good faith with a debtor, or that the Insolvency Practitioner has been suspended or removed from the practice of accountancy or law or the practice of a company secretary by a professional body in Mauritius or by a comparable body outside Mauritius, the Director may inquire into the conduct of the Insolvency Practitioner.

(4) For the purposes of an inquiry under subsection (3), the Director 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 Director such books, records or documents of the company in that person's possession or under that person's control that are relevant to the subject matter of the inquiry as the Director requires.

(5) The Director may, for the purposes of an inquiry under subsection (3), 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 an attorney for a company,

to do any of the things specified in subsection (6).

(6) A person referred to in subsection (5) may be required to—

(a) attend on the Director at such reasonable time and at such place as may be specified in a request;

(b) provide the Director with such information about the business, accounts, or affairs of the company as the Director requests;

(c) be examined on oath by the Director or by a law practitioner acting on behalf of the Director on any matter relating to the business, accounts or affairs of the company;

(d) assist the Director to the best of the person's ability.

(7) The Director may pay to a person referred to in subsection (5) (c), (d) or (f), not being an employee of the company, reasonable travelling and other expenses in complying with a requirement of the Director under subsection (6).

(8) No action or proceeding, including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall lie against any person arising from disclosure in good faith of information to the Director pursuant to this section.

376. Director may make application to Court

(1) Where the Director, as a result of the outcome of an inquiry under section 375 or otherwise, considers that there is reasonable ground to believe that the Insolvency Practitioner is unfit to act as such by reason of—

(a) persistent failure to comply with this Act;

(b) the seriousness of the failure to comply with this Act; or

(c) misconduct or serious incompetence on the part of the Insolvency Practitioner,

the Director may apply to the Court for a prohibition order under section 176, 210 or 286.

(2) Where the Court makes a prohibition order pursuant to subsection (1), that fact shall be entered in the register kept under section 374 (6) and in the register of prohibited persons kept pursuant to section 176 (5).

376A. Sanction against Insolvency Practitioner by Director

The Director may, in such manner as may be prescribed, apply a sanction against any Insolvency Practitioner who fails to comply with a request of the Director or any provision of this Act.

[S. 376A inserted by s. 11 (m) of Act 4 of 2017 w.e.f. 20 May 2017.]

377. Disclosure to, and consultation with, Director

(1) Every person who holds or at any time has held office as an agent for holders of debentures 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 Director information relating to the affairs of that company obtained in the course of holding that office where, in the opinion of that person—

(a) the company is insolvent, is likely to become insolvent or is in serious financial difficulties; or

(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

(iii) the disclosure of the information is likely to assist, or be relevant to, the exercise of any power conferred on the Director or the Court under this Part.

(2) Every auditor or agent for debenture holders or trustee for security holders shall, before disclosing any information to the Director under subsection (1), take reasonable steps to inform the company concerned of his intention to disclose the information and the nature of that information.

(3) The agent for debenture holders, trustee for security holders or auditor who has made disclosure to the Director under subsection (1), may on his own initiative consult with the Director or may be required by the Director to consult with him on the position of the company and the way in which the difficulties of the company may be addressed.

(4) The Director may, for the purpose of addressing the difficulties of a company identified by a consultation under subsection (3), give advice and assistance in connection with any scheme for resolving the difficulties of the company, and may appoint an independent adviser to work with the company to address such difficulties and report to the Director.

(5) No action or proceedings, including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall 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 Director pursuant to subsection (1).

378. Registers to be kept by Director

(1) The Director shall keep and maintain a public register of discharged and undischarged bankrupts and a public register of persons who are subject to a summary instalment order.

(2) The registers shall be maintained as specified in the Tenth Schedule.

PART VIII – OFFENCES

Sub-Part I – Offences by Bankrupt

379. Offences in relation to debts

(1) Any bankrupt who—

(a) did not, when contracting a debt, expect to be able to pay—

(i) the debt when it fell due for payment;

(ii) all his debts when they fell due for payment; and

(iii) all his other debts (including future and contingent debts); or

(b) has materially contributed to, or increased, the extent of his insolvency by gambling, by rash and hazardous speculations, by unjustifiable spending or by extravagance in living,

shall commit an offence.

(2) For the purposes of subsection (1), a person shall rebuttably be presumed to have committed the offence if, when contracting the debt, he had no reasonable ground to believe that he would be able to pay the debt when it fell due for payment and pay all his other debts (including future and contingent debts).

380. Offences involving fraud

(1) Any bankrupt who—

(a) conceals or removes any part of his property—

(i) within 2 months before any unsatisfied judgment or order for payment of money is obtained against him; or

(ii) at any time after an unsatisfied judgment or order for payment of money is obtained against him;

(b) with intent to defraud a creditor, makes, or causes to be made, any gift, disposition, or transfer of, or security interest in, his property; or

(c) after an application for his adjudication has been filed, or within 2 years before the application is filed—

(i) conceals any part of his property to the value of 5,000 rupees or such other amount as may be prescribed, or more;

(ii) conceals any debt due to him or due from him; or

(iii) fraudulently removes any part of his property to the value of 5,000 rupees or such amount as may be prescribed, or more,

shall commit an offence.

(2) Any bankrupt who within 2 years before his adjudication makes or produces a written statement to a person who—

(a) is at the time a creditor; or

(b) becomes a creditor as a result of the statement being made or produced to that person,

shall, where the statement is not a true and fair statement of his affairs, commit an offence.

(3) Any bankrupt who, after an application for his adjudication has been filed, or within 2 years before the application is filed—

(a) conceals, destroys, mutilates, or falsifies, or is a party to the concealment, destruction, mutilation, or falsification of any book or document affecting, or relating to his property or affairs;

(b) makes, or is a party to the making of, any false entry in any book or document affecting, or relating to his property or affairs;

(c) fraudulently parts with, alters, or makes any omission, or is a party to fraudulently parting with, altering, or making any omission in, any document affecting, or relating to his property or affairs;

(d) prevents the production of any book, document, paper, or writing affecting, or relating to his property or affairs to any person to whom he has an obligation under this Act to produce it; or

(e) attempts to account for any part of his property by fictitious losses or expenses,

shall commit an offence.

(4) Any bankrupt who within 12 months before an application for his adjudication has been filed or at any time after the application is filed—

(a) obtains property on credit and has not paid for the property;

(b) obtains property on credit—

(i) by a false representation or other fraud;

(ii) by a false statement of financial position or other false statement of his affairs; or

(iii) under the false pretence of carrying on business and dealing in the ordinary course of trade; or

(c) pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary course of trade, any property that he has obtained and has not paid for,

shall commit an offence.

(5) Any bankrupt who makes a false representation or is guilty of any other fraud for the purposes of obtaining the consent of a creditor to any agreement with reference to his affairs or his bankruptcy shall commit an offence.

(6) Any bankrupt who, after an application for his adjudication has been filed or within 12 months before the application is filed, departs from Mauritius and takes with him any part of his property to the value of 10,000 rupees or such other sum as may be prescribed, or more, that ought, by law, to be divided among his creditors, shall commit an offence.

(7) It shall be a defence for—

(a) a person charged with an offence under subsection (2), (3) (e) or (6) to prove that, at the material time, he had no intent to defraud;

(b) a person charged with an offence under subsection (3) (a), (b) or (d) to prove that, at the material time, he had no intent to conceal his state of affairs.

(8) Any person who commits an offence under section 379 or this section shall, on conviction, be liable to imprisonment for a term not exceeding 3 years and to a fine not exceeding 200,000 rupees.

381. Failure to keep proper record

(1) (a) Any bankrupt who, for any period during the 3 years before his adjudication, might reasonably be expected, because of his occupation or transactions for the period, to keep a record of those transactions and has failed to keep and preserve a proper record of the transactions, shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 12 months and to a fine not exceeding 50,000 rupees.

(b) An information for an offence under this subsection may be laid against a bankrupt at any time within 2 years after the date of his adjudication.

(2) Any bankrupt who, with intent to conceal the true state of his affairs, fails to keep and preserve a proper record of his transactions, shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 3 years and to a fine not exceeding 200,000 rupees.

(3) For the purposes of subsections (1) and (2), a bankrupt shall be deemed not to have kept a proper record of his transactions if, being engaged in any trade or business, he has not kept the necessary books and accounts.

(4) In subsection (3), "necessary books and accounts" means the books and accounts that are necessary to explain his transactions and financial position in his trade or business, and include—

(a) a book or books containing entries from day to day in sufficient detail of all cash received and cash paid; and

(b) if his trade or business has involved dealing in goods—

(i) a record of all goods sold and purchased;

(ii) detailed stock sheets of annual and other stock takings showing the quantity and the valuation he made of each item of stock on hand; and

(c) if his trade or business has involved his services, details of those services.

(5) For the purposes of subsections (1) and (2), a bankrupt shall be deemed not to have preserved a proper record of his transactions if he has not preserved—

(a) the records listed in subsection (4), if applicable;

(b) a record of all goods purchased in the course of his business, with the original invoices; and

(c) a daily record of all goods sold on credit.

382. Other offences

(1) Any bankrupt who—

(a) without reasonable excuse contravenes section 25 (1), 40, 41, 42, 43, 62 or 66 (3);

(b) refuses or neglects to answer fully and truthfully all proper questions put to him at any examination held under this Act;

(c) wilfully misleads the Official Receiver in any statement made to him in the course of the administration of his affairs, whether orally or in writing or in any answer to any question put to him;

(d) after becoming aware that any person has filed a false proof in the bankruptcy, fails to disclose that fact immediately to the Official Receiver;

(e) has within 2 years before his adjudication, at a time when he was unable to pay his debts as they became due, given, with intent to defraud his creditors, any voidable preference to any of his creditors;

(f) while a bankrupt, within 3 years after his adjudication and without having first obtained the consent of the Official Receiver, departs from Mauritius;

(g) before he obtains a final order of discharge, or before a suspended order of discharge takes effect—

(i) alone, or jointly with another person, obtains credit of 10,000 rupees or such amount as may be prescribed, or more; or

(ii) incurs liability to any person of 10,000 rupees or such amount as may be prescribed, or more, for the purpose of obtaining credit for another person; or

(h) acts as a director of a company,

shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 12 months and to a fine not exceeding 100,000 rupees.

(2) An information for an offence in subsection (1) may be laid against a bankrupt at any time within 2 years after the time when the matter of the information arose.

(3) It shall be a defence for—

(a) a person charged with an offence under subsection (1) (g) (i) if he proves that, before obtaining the credit, he informed the person giving the credit that he was an undischarged bankrupt;

(b) a person charged with an offence under subsection (1) (g) (ii) if he proves that, before incurring the liability, the person giving the credit was informed that the person incurring the liability was an undischarged bankrupt.

Sub-Part II – Offences relating to Winding Up

383. Offences relating to winding up

(1) Every person who being a past or present officer or a contributory of a company which is being wound up—

(a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property of the company and how and to whom and for what consideration and when the company disposed of any part of that property, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, as he directs—

(i) all the property of the company in his custody, control or possession and which he is required by the liquidator to deliver up; or

(ii) all books and papers in his custody, control or possession belonging to the company and which he is required by the liquidator to deliver up;

(c) within 12 months preceding the commencement of the winding up or at any time thereafter—

(i) has concealed any part of the property of the company to the value of 5,000 rupees or more, or has concealed any debt due to or from the company;

(ii) has fraudulently removed any part of the property of the company to the value of 5,000 rupees or more;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any document affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any document affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulently parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;

(d) makes any material omission in any statement relating to the affairs of the company;

(e) knowing or believing that a false debt has been proved by any person, fails for a period of 28 days to inform the liquidator of that fact;

(f) prevents the production of any document affecting or relating to the property or affairs of the company;

(g) within 12 months preceding the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or

(h) within 12 months preceding the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000,000 rupees and to imprisonment for a term not, exceeding 5 years, and the Court may order that the person being convicted shall not for a period not exceeding 5 years from the date of the order, be a promoter or director of a company or be directly or indirectly concerned in the management of a company as may be specified in the order.

(2) It shall be a defence to a charge under subsection (1) (a) or (b) or subparagraph (i), (vii) or (viii) of subsection (1) (c) if the accused proves that he had no intent to defraud, and to a charge under subsection (1) (e) or

subparagraph (iii) or (iv) of subsection (1) (c) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the purpose of this Act.

(3) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1) (c) (viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall commit an offence and shall, on conviction, be liable to the penalties applicable to subsection (1).

(4) Where, in relation to section 194 (3) (f), a director of a company fails to settle dues in respect of PAYE, NPF, Training Levy, Workfare Programme Fund on its due date, that person shall be personally liable for the total amount due, including all penalties, charges and interests thereon.

384. Inducement to be appointed liquidator

(1) Subject to subsection (2), any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall commit an offence and shall be liable, on conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) The negotiation or discussion in good faith of remuneration for undertaking the appointment shall not constitute a breach of subsection (1).

385. Interference with documents

Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any documents or securities or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000,000 rupees and to imprisonment for a term not exceeding 5 years.

386. Phoenix company

(1) In subsection (2)—

"director of a failed company" means a person who was a director of a failed company at any time in the period of 12 months before the commencement of its winding up;

"failed company" means a company that was placed in liquidation at a time when it was unable to pay its due debts;

"phoenix company", in relation to a failed company, means a company that, at any time before or within 5 years after the commencement of the winding up of the failed company or within the period prescribed by regulations, is incorporated with or changes its name to the name of the failed company or a name that is substantially the same;

"pre-liquidation name" means any name (including any trading name) of a failed company in the 12 months before the commencement of that company's winding up;

"similar name" means a name that is so similar to a pre-liquidation name of a failed company as to reasonably suggest an association with that company.

(2) Subject to section 387 except with the leave of the Court, a director of a failed company shall not, for a period of 5 years after the date of commencement of the winding up of the failed company—

(a) be a director of a phoenix company; or

(b) be directly or indirectly concerned or take part in the promotion, formation or management of a phoenix company; or

(c) be directly or indirectly concerned in or take part in the carrying on of a business that has the same or substantially the same name as the failed company's pre-liquidation name or a similar name.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding 1,000,000 rupees and to imprisonment not exceeding 2 years.

(4) A person who contravenes subsection (2) (a) or (b) is personally liable for all of the relevant debts of the phoenix company.

(5) A person who is involved in the management of a phoenix company is personally liable for all of the relevant debts of the company where—

(a) in the management of the company the person acts or is willing to act on instructions given by another person; and

(b) at that time the person knows that the other person is contravening subsection (2) (a) or (b) in relation to the company.

(6) For the purposes of this section—

"relevant debt"—

(a) in subsection (4) means the debts and liabilities incurred by the phoenix company while the person liable was involved in the management of the company and the phoenix company was known by a pre-liquidation name of a failed company or a similar name; and

(b) in subsection (5) means the debts and liabilities incurred by the phoenix company while a person was acting or was willing to act on the instructions of another person and the phoenix company was known by a pre-liquidation name of a failed company or a similar name.

(7) Any liability under subsections (4) and (5) is joint and several.

(8) For the purposes of subsections (4) and (5), a person who, as a person involved in the management of a company, has at any time acted on instructions given by a person whom he knew at the time to be in contravention of subsection (2) is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

387. Exception to section 386

(1) Section 386 (2) and (3) does not apply to a person named in a successor company notice.

(2) A successor company is a company that acquires the whole or substantially the whole of the business of a failed company under arrangements made by a liquidator or receiver or made under a deed of company arrangement.

(3) A successor company notice is a notice by a successor company that—

(a) is sent by the successor company to all creditors of the failed company for whom the successor company has an address;

(b) is sent to those creditors within one month after the arrangements for the acquisition of the business are made under subsection (2);

(c) specifies—

(i) the name and registered number of the failed company;

(ii) the circumstances in which the business has been acquired by the successor business;

(iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on that business;

(iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on that business; and

(d) states, in respect of a person named in the notice—

(i) his full name;

(ii) the duration of his directorship of the failed company; and

(iii) the extent of his involvement in the management of the failed company.

(4) A person does not contravene a prohibition in section 386 (2) and (3) for the temporary period set out in subsection (5) if that person applies to the Court within 5 working days after the commencement of the winding up of the failed company for an order exempting that person from the prohibition in question.

(5) The temporary period in subsection (4) is the period beginning on the date of the commencement of the winding up of the failed company and ending on the earlier of—

(a) the close of 42 days after the commencement of the winding up; and

(b) the date on which the Court makes an order of exemption.

(6) The prohibitions in section 386 (2) (a) and (b) do not apply in respect of a phoenix company that has been known by a name or names that are the same as the failed company's pre-liquidation name or are similar names where—

(a) it has been known by that name or those names for not less than the period of 12 months before liquidation commences; and

(b) it has not been dormant during those 12 months.

(7) For the purposes of subsection (6), a company has not been dormant during the 12 month period if transactions that are required by section 193 (2) of the Companies Act to be recorded in its accounting records have occurred throughout that period.

Sub-Part III – Miscellaneous Offences

388. Acting in breach of prohibition order

Any person who acts in contravention of a prohibition order made under section 176, 210 or 286 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000,000 rupees and to imprisonment for a term not exceeding 5 years.

389. False or misleading statement

Any person who—

(a) for the purposes of or in connection with any application under this Act;

(b) in purported compliance with any requirement imposed by or under this Act; or

(c) in relation to any report to the Court or to a liquidator, receiver or administrator or the Insolvency Service or the Official Receiver,

furnishes information knowing it to be false or misleading in a material respect, or recklessly furnishes information which is false or misleading in a material respect or intentionally omits to disclose any matter or thing without which any application, report or information is misleading in a material respect, shall commit an offence and shall, on conviction, be liable, to a fine not exceeding 2,000,000 rupees and to imprisonment for a term not exceeding 2 years.

390. Creditor's fraudulent act

Where a creditor, or a person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year and a fine not exceeding 100,000 rupees.

391. Offence of obtaining credit

(1) A person shall commit an offence where—

(a) he is a debtor in respect of whom a summary instalment order has been made; and

(b) before all creditors have been paid all amounts to which they are entitled under the order, he—

(i) alone or jointly with another person, obtains for the time being credit of 1,000 rupees or such other sum as may be prescribed, or more;

(ii) incurs liability to any person of 1,000 rupees, or such other sum as may be prescribed, or more, for the purpose of obtaining credit for another person; or

(iii) enters into a hire purchase agreement under which he is liable to pay 1,000 rupees or such other sum as may be prescribed, or more.

(2) It shall be a defence to a charge under subsection (1) where the person charged proves—

(a) in a case to which subsection (1) (b) (i) applies, that before obtaining the credit he informed the person giving the credit that he was affected by a summary instalment order;

(b) in a case to which subsection (1) (b) (ii) applies, that before he incurred the liability the person giving the credit was informed that he was affected by a summary instalment order.

(3) A person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding one year and a fine not exceeding 50,000 rupees.

(4) An information for an offence under this section may be laid at any time within 2 years after the time when the matter of the information arose.

392. Dealing with company property

(1) A company officer who—

(a) purports, on the company's behalf, to enter into a transaction or dealing that is void under section 226 (1); or

(b) is in any other way knowingly concerned in, or party to, the void transaction or dealing, whether—

(i) by act or omission; or

(ii) directly or indirectly,

shall commit an offence.

(2) The Court may order a company officer who is convicted of an offence under subsection (1) to compensate any person, including the company, who has suffered loss as a result of the act or omission constituting the offence.

393. Failure to comply with section 298, 299 or 300

(1) Any person who, without lawful justification or excuse,—

(a) fails to comply in any respect with any of the requirements affecting that person under section 298, 299 or 300;

(b) supplies any information which that person is required to supply under section 298, 299 or 300 which is false or misleading in a material particular,

shall commit an offence.

(2) A person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding one year and to a fine of 1,000,000 rupees.

394. Disclosure of notice

(1) Subject to subsection (2), every person who discloses that a notice has been given under section 297 shall commit an offence.

(2) Subsection (1) shall not apply to the disclosure or publication of the fact that a notice has been so given where the disclosure or publication is made—

(a) to any professional or financial adviser of the company or related company to which the notice relates;

(b) with the written consent of the Director, for the purposes of the sale or other disposition, or the possible sale or other disposition of the capital or business undertaking of a prescribed company or related company;

(c) with the written consent of the Director to any person who has a proper interest in knowing that the notice has been given.

395. Failure to give notice under section 374

Any person who fails to give to the Director the notice required under section 374 shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year and to a fine not exceeding 1,000,000 rupees.

396. False proof by creditor

Any person who—

(a) makes, or authorises the making of, a proof under section 305 (3) that is false or misleading in a material particular, knowing that it is false or misleading; or

(b) omits, or authorises the omission any matter, from a proof under section 305 (3), knowing that the omission makes the proof false or misleading,

shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 1,000,000 rupees.

397. Contravention of Act

Any person who in any other manner contravenes this Act shall commit an offence.

398. General penalty

A person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

399. Jurisdiction

Notwithstanding—

(a) section 114 of the Courts Act; and

(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act.

400. Liability after discharge or composition

Where a debtor has committed an offence under this Act, he shall not be exempt from being proceeded against for the offence by reason that he has obtained his discharge or that a composition or other scheme of arrangement has been accepted or approved.

PART IX – MISCELLANEOUS

401. Power of Court

(1) (a) The Court shall have jurisdiction to try and adjudicate upon all questions of ownership relating to movable or immovable property claimed by or from the Official Receiver or a liquidator, whether the property is in the possession of the trustee or not, and to decide and adjudicate upon any debt or claim due to or from the bankrupt or company in winding up.

(b) The Court may refer the parties to the competent Court to have any contested matter adjudicated upon on an issue framed by it.

(2) The Court may at any time amend any process or proceeding under this Act on such terms as the Court thinks appropriate.

(3) Subject to any rules of the Court, the Court may, in any matter, take the whole or any part of the evidence either *viva voce* or by interrogatories or upon affidavit or by commission abroad.

(4) For the purposes of approving the composition or scheme by joint debtors, the Court may, if it thinks fit and on the report of the Official Receiver or a liquidator that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(5) Where 2 or more bankruptcy petitions or petitions for winding up are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks appropriate.

(6) Where a petitioner for a bankruptcy order or an order for winding up does not proceed with due diligence on the application, the Court may substitute as applicant any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the applicant creditor.

(7) No defect or irregularity in the appointment or election of a receiver, liquidator or member of a committee of inspection shall invalidate any act done by him in good faith.

(8) The Court may order the erasure of any inscription by the Conservator of Mortgages where it appears that the creditor who has taken such inscription is not entitled to priority over the chirograph creditors of the debtor.

402. Irregularity in proceedings

(1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused by such circumstance which cannot be remedied by an order of the Court.

(2) The Court may if it thinks appropriate make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3) Notwithstanding subsections (1) and (2), or any other provision of this Act, where an omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors, has occurred in the management or administration of a company whereby a provision of this Act has been contravened, or whereby there has been default in the observance of the constitution of a company or whereby any proceedings at or in connection with any meeting of the company or of the directors of any assembly purporting to be such a meeting have been

rendered ineffective, including the failure to make or lodge with the Registrar of Companies any declaration of insolvency, the Court—

(a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to nullify or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;

(b) shall, before making any such order, satisfy itself that such an order would not do injustice to the company or to any member or creditor;

(c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and

(d) may determine what notice or summons is to be given to other persons of the intention to make any such application of or the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court may, on good cause being shown, enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any subsidiary enactment made under this Act on such terms as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

403. Power to grant relief

(1) Where in any proceedings before the Court for negligence, default or breach of duty against a person to whom this section applies it appears to the Court that he is or may be liable in respect thereof, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks appropriate.

(2) The section shall apply to—

(a) a director or officer of a company;

(b) a person employed by a company as auditor;

(c) a person who is a receiver or manager or liquidator or administrator appointed under this Act.

404. Duty and liability of agent

Every duty and liability imposed on the principal in the cases referred to in section 39, 44, 50 or 51 shall devolve and be imposed on the agent where the principal is absent from Mauritius.

405. Costs and fees of Official Receiver

(1) (a) The fees fixed by Schedule A to the Legal Fees and Costs Rules 1990 shall be levied by the Official Receiver out of the debtor's estate and shall be paid into the Consolidated Fund;

(b) Such fees shall be paid as a preferential claim as provided by the Fourth Schedule.

(2) Subject to subsection (1), necessary disbursements made by the Official Receiver when acting under this Act (the amount of these disbursements shall be settled by the Court) shall be paid out of the estate, if sufficient, and otherwise shall be payable by the petitioning creditor and recoverable upon a certificate of the amount allowed by the Court.

406. Confidentiality

(1) Every member of the Companies Supervisory Committee and every employee in the Insolvency Service shall—

(a) before he begins to perform any duties under this Act, take an oath of confidentiality in the form set out in the Eleventh Schedule; and

(b) maintain during or after his relationship with the Insolvency Service, the confidentiality of any information received in the course of a consultation or investigation conducted under this Act which comes to his knowledge.

(2) Subject to subsection (3) and except for the purposes of administering this Act or where he is authorised to do so by the Companies Supervisory Committee or Insolvency Service as the case may be, no person referred to in subsection (1) shall communicate to any unauthorised person any information received in the course of a consultation or investigation conducted under this Act.

(3) Except where ordered by the Court for a reason specified in subsection (4), no person referred to in subsection (1) shall be required to produce or divulge to any Court, tribunal, committee of inquiry or other authority in Mauritius or elsewhere any document, information or other matter coming to his notice, or being in his possession or control for any reason.

(4) The Court may authorise the disclosure of the information for the purposes of investigation of a suspected offence or the institution of criminal proceedings whether under this Act or not, where the Court considers that there are reasonable grounds for suspecting that an offence has taken place.

407. Protection from liability

No action shall lie against the Director, or any member of the Companies Supervisory Committee or any of the employees of the Insolvency Service or employees of the Companies Supervisory Committee, the Official Receiver and Deputy Official Receivers in respect of any act done or omitted to be

done by the Insolvency Service, the Director or any member of the Companies Supervisory Committee or any employee, the Official Receiver and Deputy Official Receivers in the execution, in good faith, of its or his functions under this Act.

408. Service of documents

Service of a document under this Act shall be made in accordance with sections 323 to 328 of the Companies Act.

409. Deposition as evidence

In the case of the death of a bankrupt or his spouse, or of a witness whose evidence has been received by the Court in any proceedings under this Act, the deposition of the person so deceased, purporting to be sealed, or an official copy thereof purporting to be sealed, shall be admitted as evidence of the matters deposed to in the deposition.

410. Time of payment in insolvency

Notwithstanding any other enactment where—

(a) a person is adjudicated bankrupt; or

(b) a company is wound up,

any payment, settlement or transaction shall have effect having regard to the time at which the Official Receiver or liquidator is appointed as recorded on the bankruptcy order in the case of bankruptcy and as required to be recorded in the case of a company winding up.

411. Regulations

(1) The Minister may—

(a) make such regulations as he thinks fit for the purposes of this Act;

(b) by regulations, amend any of the Schedules.

(2) Any regulations made under this Act may—

(a) provide for the taking of fees and levying of charges;

(b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) (a) Before the Minister makes any regulations in relation to the qualifications of Insolvency Practitioners, he shall, through the Insolvency Service, not less than 60 days before the regulations are made—

(i) give written notice to all professional bodies and all persons who are, at the time of the notice, on the register of Insolvency Practitioners; and

(ii) give public notice,

of his intention to do so.

(b) A notice under paragraph (a) shall state—

(i) the matters to be contained in the regulations;

(ii) that a copy of the draft regulations is available for inspection at the office of the Director on weekdays from the hours of 9:00 a.m. to 4:00 p.m. and may also be consulted on the website of the Office; and

(iii) that submissions on the draft regulations may be made, in writing or by e-mail, to the Director not later than 30 days from the date of the publication of the notice.

[S. 411 amended by s. 14 (c) of Act 27 of 2012 w.e.f. 22 December 2012.]

412. Fees payable to Director

Subject to this Act, the Director shall be paid such fees as may be prescribed.

413. Repeals

The following enactments are repealed—

(a) Bankruptcy Act;

(b) Insolvency Act.

414. —

415. Transitional provisions

(1) Notwithstanding the repeal of the enactments and provisions specified in section 413, any fee, charge or sum paid or unpaid under the repealed enactments or provisions on 1 June 2009 shall, in respect of the corresponding period, be deemed to have been paid or unpaid under this Act.

(2) (a) Subject to subsection (4), any person appointed under any enactment repealed by section 413 and holding office on 1 June 2009 shall remain in office as if he had been appointed under this Act.

(b) Any act made, executed, issued or passed under any enactment repealed by section 413 and in force and operative on 1 June 2009 shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, executed, issued or passed, under this Act.

(c) All proceedings, judicial or otherwise, commenced before and pending immediately before 1 June 2009 under the Bankruptcy Act 1888, the Insolvency Act 1982, the Companies Act 1984 and the Companies Act 2001 shall be deemed to have commenced and may be continued under those Acts.

(ca) Notwithstanding paragraph (c), a debtor who is adjudicated bankrupt before 1 June 2009 shall be discharged from bankruptcy in accordance with sections 57 to 66.

(d) A person may continue to act as liquidator or receiver or manager of the property of a company if his appointment was validly made before the commencement of this Act.

(3) (a) If an insolvency proceeding has started before 1 June 2009, the law governing that insolvency proceeding is the law that would have applied if the Part had not been passed.

(b) For the purpose of subsection (3) (a), an insolvency proceeding is taken to have started on the date on which the judicial manager, Official Receiver, statutory manager, receiver, liquidator or administrator was appointed.

(4) Notwithstanding section 371, the Official Receiver and his staff presently in office in the Supreme Court shall continue to be in the service of the Judicial Department, but may be assigned such additional duties by the Insolvency Service as appropriate and devolving on them by virtue of this Act, subject to such terms and conditions as may be approved.

(5) Any register, fund and account kept under any enactment repealed by this Act shall be deemed to be part of the register, fund and account kept under the corresponding provisions of this Act.

(6) Any reference to the Companies Act 1984 in the Companies Act 2001 shall be read as a reference to the corresponding sections in the Insolvency Act.

(7) The Minister may, by regulations, provide for any matter in force before 1 June 2009 to be dealt with in such manner as may be required to bring it into conformity with this Act.

(8) Where this Act does not make provision for the necessary transition from the repealed enactments to this Act, the Minister may make necessary regulations for such transition.

[S. 415 amended by s. 24 (d) of Act 27 of 2013 w.e.f. 21 December 2013.]

416. —

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FIRST SCHEDULE

[Sections 26, 108, 142, 167 and 232]

PROCEEDINGS AT MEETINGS OF CREDITORS

1. Methods of holding meetings

A meeting of creditors may be held—

(a) by assembling together those creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting; or

(b) by means of audio or radio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting.

2. Notice of meeting

(1) Written notice of—

(a) the time and place of every meeting to be held under paragraph 1 (a); or

(b) the time and method of communication for every meeting to be held under paragraph 1 (b); or

(c) the time and address for the return of voting papers for every meeting to be held under paragraph 1 (a) or (b),

shall be sent to every creditor and other person entitled to attend the meeting not less than 5 days before the meeting.

(2) The notice shall—

(a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and

(b) set out the text of any resolution to be submitted to the meeting; and

(c) include a voting paper in respect of each such resolution and voting and mailing instructions.

(3) An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors, where—

(a) the irregularity or failure is not material; or

(b) all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or

(c) all such creditors agree to waive the irregularity or failure.

(4) Where the meeting of creditors agrees, the chairman may adjourn the meeting from time to time and from place to place.

(5) An adjourned meeting shall be held in the same place unless another place is specified in the resolution for the adjournment.

(6) Where a meeting of creditors under paragraph 1 (a) or (b) is adjourned for less than one month, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

3. Chairman

(1) In the case of a bankruptcy, the Official Receiver or his nominee appointed by the Official Receiver shall act as chair of the meeting.

(2) Where a liquidator has been appointed, and is present, or where the liquidator has appointed a nominee and the nominee is present, he shall act as chair of a meeting held in accordance with paragraph 1 (a) or (b).

(3) In any case involving the winding up of a company, where there is no liquidator or neither the liquidator nor any nominee of the liquidator is present, the creditors participating shall choose one of their number to act as chairman of the meeting.

4. Quorum

(1) A quorum for a meeting of creditors is present where—

(a) 3 creditors who are entitled to vote or their proxies are present; or

(b) where the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present.

(2) Where a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place

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as the chairman may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

5. Voting

(1) At any meeting of creditors or a class of creditors, not being a meeting held for the purposes of subparagraph (2), a resolution is adopted where a majority in number and value of the creditors or the class of creditors voting in person or by proxy vote in favour of the resolution.

(2) At any meeting of creditors or a class of creditors held for the purposes of section 152, or otherwise required to be passed as a special resolution, a special resolution is adopted where a majority in number representing 75 per cent in value of the creditors or class of creditors voting in person or by proxy vote in favour of the resolution.

(3) A creditor chairing the meeting does not have a casting vote.

6. Proxies

(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.

(3) A proxy shall be appointed by notice in writing signed by the creditor and the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding one year.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the Official Receiver or his nominee, or the liquidator (as the case may be) or, where no liquidator is acting, to the person by whom the notice convening the meeting was given, not later than 48 hours before the start of the meeting.

7. Official Receiver or liquidator to report to meeting

If the Official Receiver or liquidator attends a creditors' meeting or an adjournment of the meeting, the Official Receiver or liquidator—

(a) shall report on the administration of the debtor's estate; and

(b) must give any creditor any further information that the creditor may properly require; and

(c) shall, in the case of a bankruptcy, if required, produce for the meeting (or its adjournment) all accounting records, deeds and papers in the Official Receiver's possession that relate to the bankrupt's property.

8. Attending a creditors' meeting

(1) A person may attend a creditors' meeting—

(a) by being physically present at the time and place appointed for the meeting; or

(b) if the Official Receiver or Liquidator makes it available, by means of an audio or audio-visual link, so that all those participating in the meeting can hear and be heard by each other.

(2) A creditor may also attend by proxy on any resolution to be put to the meeting.

9. Bankrupt in case of bankruptcy may be required to attend and be questioned

(1) In the case of a bankruptcy, the bankrupt must, if required by the Official Receiver, attend all creditors' meetings by being physically present or present by an audio or audio-visual link.

(2) The Official Receiver, the chairperson of the creditors' meeting, a creditor or a representative of a creditor may question the bankrupt as to his or her property, conduct or dealings. The chairperson of the meeting must allow only questions that relate to the bankrupt's property, conduct or dealings.

(3) The bankrupt must sign a statement of the bankrupt's evidence given under the questioning if required to do so by the Official Receiver or the chairperson of the meeting.

10. Attendance by non-creditors

A person who is not a creditor of the debtor may attend a creditors' meeting with the consent of—

(a) the Official Receiver or liquidator;

(b) the creditors attending the meeting, voting by ordinary resolution.

11. Minutes

(1) The person chairing a meeting of creditors shall ensure that minutes are kept of all proceedings.

(2) Minutes which have been signed correct by the person chairing the meeting are *prima facie* evidence of the proceedings.

12. Corporations may act by representatives

A body corporate which is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

13. Other proceedings

Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

SECOND SCHEDULE

[Sections 29, 116, 305 and 306]

PROOF IN ORDINARY CASES

1. Every creditor shall prove his debt as soon as may be after adjudication or the commencement of a winding up.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Receiver in the case of a bankruptcy or to the liquidator of the company in the case of a company winding up, an affidavit verifying the debt.

3. (a) The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor.

(b) Where the affidavit is made by a person who authorised the affidavit, it shall state his authority and means of knowledge.

4. (a) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be sustained.

(b) The Official Receiver or liquidator may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specifically orders.

7. A creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct from it all trade discounts, but he shall not be compelled to deduct any discount not exceeding 5 per cent on the net amount of his claim, which he may have agreed to allow for payment in cash.

9. (1) A secured creditor may exercise one of the following options:

(a) realise property subject to a security, if entitled to do so; or

(b) value the property subject to the security and prove in the bankruptcy as an unsecured creditor for the balance due (if any) after deducting the amount of the valuation; or

(c) surrender the security to the Official Receiver or liquidator for the general benefit of the creditors and prove in the bankruptcy or liquidation as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the option in subparagraph (1) (a) whether or not the creditor has exercised the option in subparagraph (1) (b).

10. (1) The Official Receiver or liquidator may at any time, by notice in writing, require a secured creditor, within one month after receipt of the notice, to—

(a) choose one of the options in paragraph 9 (1); and

(b) if the creditor chooses the second or third option, exercise that option within the one month period.

(2) A secured creditor who has been served with a notice under subparagraph (1) and fails to comply—

(a) is treated as having surrendered the security to the Official Receiver or liquidator under the option in paragraph 9 (1) (c) for the general benefit of the creditors; and

(b) may prove as an unsecured creditor for the whole debt.

11. (1) A secured creditor who realises property subject to a security may prove as an unsecured creditor for any balance due after deducting the net amount realised.

(2) Subsection (1) does not apply if the liquidator has accepted a valuation and proof of debt under paragraph 12.

(3) A secured creditor who realises property subject to a security must account to the Official Receiver or liquidator for any surplus remaining after the following amounts have been paid—

(a) the amount of the debt;

(b) interest payable on the debt up to the time when it is paid;

(c) any proper payments to the holder of any other security in the property.

12. (1) This section applies if a secured creditor values the property subject to the security and proves as an unsecured creditor for the balance due.

(2) The valuation and the proof must—

(a) be made in the prescribed form;

(b) contain full particulars of the valuation and the debt;

(c) contain full particulars of the security, including the date when it was given; and

(d) identify any documents that substantiate the debt and the security.

(3) The creditor must produce any document in subparagraph (2) (d) if required by the Official Receiver or liquidator.

13. Where a secured creditor does not either realise or surrender his security, he shall in accordance with paragraph 12, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

14. Where a creditor has so valued his security under paragraph 12, he may at any time amend the valuation and proof on showing to the satisfaction of the Official Receiver or liquidator or the Court that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court may order, unless the Official Receiver or liquidator allows the amendment without application to the Court.

15. Where a valuation has been amended in accordance with section 14, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or as the case may be, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

16. Where a creditor after having valued his security subsequently realises it, where it is realised under paragraph 11 the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

17. Where a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

18. A secured creditor shall, in no case, receive more than the full amount of his claim in principal and interest as provided by this Act.

19. (1) This paragraph applies to a secured creditor who has surrendered a security under paragraph 9 (1) (c) or 9 (2).

(2) The creditor may, with the leave of the Court or the Official Receiver or liquidator and subject to the terms and conditions that the Court or the Official Receiver or liquidator imposes—

(a) withdraw the surrender and rely on the security; or

(b) submit a new proof under paragraph 9 (1) (a) or subparagraph 9 (2).

(3) Subparagraph (2) does not apply if the Official Receiver or liquidator has already realised the property subject to the security.

20. Where a debtor was at the date of adjudication or on the commencement of the winding up, liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contract, against the properties respectively liable on the contracts.

21. Where any rent or other payment falls due at stated periods, and the adjudication or commencement of the winding up occurs at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the adjudication or commencement of the winding up as if the rent or payment accrued from day to day.

22. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for and which is overdue at the date of the adjudication or commencement of winding up and provable in the bankruptcy or liquidation, the creditor may prove for interest at a rate not exceeding 4 per cent per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

23. A creditor may prove for a debt not payable at the date of adjudication or on commencement of the winding up as if it were payable presently and may receive dividends equally with the other creditors, deducting only a rebate of interest at the rate of 4 per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

24. (1) The Official Receiver in the case of a bankruptcy or liquidator in the case of a winding up shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it.

(2) Where he rejects a proof, he shall, as soon as practicable, state in writing to the creditor the grounds of the rejection.

25. (1) The Official Receiver or liquidator may summon for examination, and examine any of the following persons—

(a) a person who has submitted or made a proof of debt;

(b) a person who has made a declaration or statement as part of the proof of debt;

(c) a person who is capable of giving evidence concerning a proof of debt or the debt to which the proof relates.

(2) The Official Receiver or liquidator may examine persons under oath in an examination under subparagraph (1).

(3) If a person who has been summoned under this section fails to attend, or attends but refuses, in an examination before the Official Receiver or liquidator, to be sworn, or refuses to give evidence, and has no reasonable excuse, the Court may—

(a) on the application of the Official Receiver or liquidator by warrant have that person arrested and brought for examination by the Court; and

(b) order that person to pay all the expenses arising out of his arrest and examination if the Court thinks that his evidence was necessary for deciding whether the proof of debt in question should be admitted or rejected.

26. (1) The debtor or any creditor may give the Official Receiver or liquidator notice to admit or reject a proof of debt.

(2) If, after 10 working days after receiving the notice, the Official Receiver or liquidator has not made a decision admitting or rejecting the proof of debt, on the application of the debtor or the creditor the Court may—

(a) admit or reject the proof; or

(b) make any other order that it thinks appropriate.

27. Where a creditor is dissatisfied with the decision of the Official Receiver or liquidator in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

28. The Court may also expunge or reduce a proof upon the application of a creditor if the Official Receiver or liquidator declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

29. (1) The Court may make an order cancelling a proof of debt or reducing its amount, if it considers that the proof was improperly admitted.

(2) The Court may make the order on the application of the Official Receiver or liquidator, the bankrupt or any creditor.

(3) The Court shall not make an order under subparagraph (1) unless the creditor who submitted the proof has been served with the application.

30. (1) A creditor whose proof of debt has been rejected by the Official Receiver or liquidator may apply to the Court for an order modifying or reversing the Official Receiver or liquidator's decision.

(2) The creditor must apply within 15 working days after the creditor receives the Official Receiver or liquidator's notice of rejection of the proof, or within the additional time that the Court allows.

(3) The Court may—

(a) reverse or modify the Official Receiver or liquidator's decision in whole or in part; or

(b) confirm it.

(4) A creditor has no right to prove for a debt or liability that has been rejected by the Official Receiver or liquidator, unless the creditor has made an application under this section.

31. (1) This section applies to an application that is made under paragraph 27 or 28 or 29 or 30.

(2) If the applicant is not the Official Receiver or liquidator the applicant shall name and serve the Official Receiver or liquidator (as the case may be) as a party to the proceeding.

(3) The debtor and any creditor may give notice to the Court hearing the application, and, on doing so, become parties to the proceedings.

32. On an application under paragraph 27 or paragraph 28 or paragraph 29 or paragraph 30 the Court hearing the application may, if it thinks it appropriate, order that any costs—

(a) of a creditor be added to the creditor's proof of debt;

(b) of any party to the proceeding be paid out of the debtor's estate;

(c) be paid by any party to the proceedings, except the Official Receiver or liquidator.

33. For the purpose of any of his duties in relation to proofs, the Official Receiver or liquidator may administer oaths and take affidavits.

34. If a creditor's security is wholly or partly void under the provisions of this or any other Act, the creditor may prove as an unsecured creditor—

(a) if the security is wholly void, for the whole of the debt; or

(b) if the security is partly void, to the extent that the debt is unsecured.

35. A person who obtained an order for costs against the debtor before adjudication may prove for the amount of the costs when the costs are fixed, even if the amount is fixed only after adjudication.

36. (1) This paragraph applies if the debtor at the time of adjudication is a shareholder of a company that has not been put into liquidation.

(2) The company may prove for—

(a) the amount of unpaid calls on the debtor made before adjudication or the commencement of the winding up in respect of the debtor's shares; and

(b) the value of the liability to calls to be made in the period of one year after adjudication or commencement of the winding up.

(3) The value referred to in paragraph (2) (b) must be estimated—

(a) as agreed by the Official Receiver or liquidator and the company; or

(b) if the Official Receiver or liquidator and the company cannot agree, as directed by the Court.

(4) This paragraph does not affect the provisions of sections 124 to 127 in the event that the company is put into liquidation.

37. (1) This paragraph applies if a person ("A")—

(a) is, at the time of adjudication or commencement of the winding up, surety or liable for a debt or liability of the debtor; and

(b) discharges the debt or liability, even after adjudication or commencement of the winding up.

(2) A has the benefit of the rules in subparagraphs (3) and (4).

(3) If the creditor in question has submitted a proof of debt for the debt or liability, A may stand in the creditor's place in respect of the proof.

(4) If the creditor in question has not submitted a proof of debt for the debt or liability, A may—

(a) prove for the payment that A has made as if the payment were a debt, without undoing dividends already paid to the creditor in the bankruptcy or winding up; and

(b) receive dividends paid subsequently.

THIRD SCHEDULE

[Section 52]

BANKRUPT'S PUBLIC EXAMINATION

1. Notice of examination

(1) If a public examination of the bankrupt is required, the Official Receiver must serve the bankrupt with a notice that states—

(a) that the Official Receiver's statement or the creditor's resolution has been filed with the Court;

(b) that the bankrupt is required to be publicly examined; and

(c) the time and place of the examination.

(2) At least 7 days before the examination, the Official Receiver must—

(a) advertise the examination in the prescribed manner; and

(b) send a notice of the examination to each creditor.

2. Time for holding examination

The Court shall hold the public examination of the bankrupt as soon as practicable, but not before 7 days have elapsed after the Official Receiver has sent the bankrupt a notice under paragraph 1.

3. Official Receiver must file report before examination

Before the public examination of the bankrupt, the Official Receiver shall file in the Court a report on—

(a) the bankrupt's estate;

(b) the bankrupt's conduct; and

(c) all other matters of which the Court should be informed.

4. Conduct of examination

(1) The bankrupt shall attend the examination, and may be examined as to the bankrupt's conduct, dealings and property.

(2) The bankrupt shall be examined on oath and shall answer all questions that the Court asks the bankrupt, or allows the bankrupt to be asked.

(3) The following persons may examine the bankrupt—

(a) the Official Receiver, or counsel for the Official Receiver; and

(b) any creditor who has proved a claim, or counsel for that creditor.

(4) The bankrupt is not entitled to notice beforehand of who will ask the questions or what the questions will be.

5. Record of examination

(1) The examination shall be recorded in writing as the Court directs.

(2) The record of the examination must be—

(a) read over to, and signed by, the bankrupt;

(b) available for inspection by any creditor or that creditor's attorney at all reasonable times.

6. When examination ends

(1) The public examination of a bankrupt ends when the Court makes an order that the examination is ended.

(2) The Court shall not make an order that the examination is ended unless it is satisfied that the bankrupt's conduct, dealings, and property have been sufficiently investigated and that the investigation is finished.

7. Bankrupt's failure to attend examination

If the bankrupt does not appear for the examination at the appointed time and has no reasonable excuse—

(a) an Intermediate Court Magistrate or the Court may, on the Official Receiver's application, by warrant, cause the bankrupt to be arrested and brought up for examination by the Court; and

(b) the Court may order the bankrupt to pay all the expenses arising out of the arrest and examination before the Court, if the Court thinks that the bankrupt's evidence was necessary for the purposes of the bankrupt's estate.

8. Bankrupt's expenses in attending examination

(1) A bankrupt who attends a public examination is entitled to be paid the prescribed expenses of attending.

(2) A bankrupt does not default in attending a public examination if the prescribed expenses of attending have not been paid or tendered to him before the examination.

9. Official Receiver may examine company documents, personnel, and shareholders

(1) If authorised by the Court, the Official Receiver or a person appointed by the Official Receiver may exercise the powers set out in subparagraph (2) in relation to a company that is controlled by the bankrupt or an associate or associates.

(2) The Official Receiver may—

(a) examine the documents of the company;

(b) examine any past or present director, employee, or shareholder of the company on oath about the company's affairs.

(3) The examination of a person under subparagraph (2) (b) must be recorded in writing, and the person examined must sign the written record if required to do so by the Official Receiver.

10. Meaning of associate

(1) In paragraph 9, "associate" means any of the following—

(a) the bankrupt's spouse;

(b) a relative of the bankrupt;

(c) the spouse of a lineal ancestor or descendant of the bankrupt.

(2) In paragraph 9, a company is controlled by the bankrupt if the bankrupt or his nominee has the power to appoint or remove all the directors of the company or such number of directors as together hold a majority of the voting rights at meetings of directors of the company.

Privilege and Representation of Persons Examined

11. No privilege against self-incrimination

(1) A person who is examined or questioned under any power under this Act must answer all questions relating to the bankrupt's conduct, dealings and property.

(2) A person is not excused from answering a question because the question may incriminate or tend to incriminate that person.

12. Statement made by person examined or questioned not generally admissible in criminal proceedings against that person

(1) A statement made by a person examined or questioned under this Act in response to a question is not admissible in criminal proceedings against that person.

(2) However, the statement is admissible if—

(a) the person was examined or questioned under oath and is charged with perjury in relation to the statement; or

(b) in the case of the bankrupt, the bankrupt is charged with an offence under section 389.

13. Representation

(1) A person who is examined under this Act may be represented by a lawyer.

(2) The person may be questioned by his lawyer, and any answers form part of the examination.

FOURTH SCHEDULE

[Sections, 53, 116, 117, 119, 136, 146, 154, 182, 204, 217, 278, 328 and 405]

PREFERENTIAL CLAIMS

1. Priority of payments to preferential creditors

(1) *Costs of liquidator*

The Official Receiver or liquidator shall first pay, in the order of priority in which they are listed—

(a) the fees and expenses properly incurred by the Official Receiver or liquidator in carrying out the duties and exercising the powers of the Official Receiver or liquidator and the remuneration of the Official Receiver or liquidator including the cost of an audit under section 179;

(b) the fees and expenses and remuneration properly incurred by the trustee of a Proposal under section 79 or of the Official Receiver under a Summary Instalment Order under section 87 or an administrator under Sub-part I or Part III in relation to companies, in carrying out the duties and exercising the powers of the trustee, Official Receiver or administrator;

(c) the reasonable costs of a person who applied to the Court for adjudication in the case of bankruptcy or an order in the case of a liquidation that the company be wound up, including the reasonable costs incurred between attorney and client in procuring the order, the quantum of such costs being determined in accordance with the rules of Court;

(d) the actual out-of-pocket expenses necessarily incurred by a committee of inspection;

(e) rent incurred by the Official Receiver or liquidator in relation to property of the debtor let or tenanted to the Official Receiver or liquidator during the period following adjudication or commencement of the winding up;

(f) to any creditor who protects or preserves assets of the debtor for the benefit of the debtor's creditors by the payment of money or the giving of an indemnity—

(i) the amount received by the Official Receiver or liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting or preserving those assets;

(g) costs incurred by the liquidator for essential services under section 136;

(h) cost of brokers' charges and commission on the sale and removal of charges (article 2108 of the Code Civil Mauricien).

(1.1) (a) In the event of the winding up of an insurance company, distribution of the assets will be effected in accordance with section 63 of the Insurance Act.

(b) In the event of the winding up of a private pension scheme, distribution of the assets will be effected in accordance with FSC Rules made under section 47 of the Private Pension Schemes Act.

(2) *Amounts due to Government and its Agencies*

After paying any claims referred to in subparagraph (1), the Official Receiver or liquidator must next pay, to the extent that it remains unpaid to the Director-General of the Mauritius Revenue Authority, Registrar-General or a local authority as the case may require, the amount of—

(a) —

(b) —

(c) income tax, excluding any amount withheld pursuant to section 102, or deducted pursuant to section 111J, of the Income Tax Act;

(d) registration duty payable under the Registration Duty Act;

(e) duty payable under the Customs Act;

(f) charges, dues or duties payable to the Director-General of the Mauritius Revenue Authority under any enactment;

(g) charges, or dues payable to a local authority under any enactment,

that is due and unpaid for a period not exceeding 4 years prior to the date of adjudication or the commencement of the winding up but limited in each case to the greatest amount due in respect of the period of any one tax or revenue year over the said period of 4 years. Such claims shall be inscribed on a yearly basis failing which they will not qualify for payment.

(3) *Wages or salaries due to employees*

(a) After paying the claims referred to in subparagraph (2), the Official Receiver or liquidator must next pay, to the extent that they remain unpaid, the following claims—

(i) subject to paragraph 3, all wages or salary of any employee of the debtor, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services provided to the debtor during the period of one month before the commencement of the adjudication or winding up;

(ii) amounts that are preferential claims under sections 53 and 119 (5) (claim relating to *lien* over records or documents of debtor);

(iii) all sums which by any other enactment are expressly required to be paid in accordance with the priority established by this section.

(b) The maximum amount that may be paid to any one employee under subparagraph (a) (i) is 30,000 rupees or such other sum as may be prescribed.

(4) *Costs of compromise with creditors*

After payment of the claims referred to in subparagraph (3) the liquidator in the case of a liquidation must next pay the amount of any costs referred to in section 260 (c) of the Companies Act (costs of compromise by company with creditors).

(5) *Payments made pari passu with first ranking fixed and floating charges and mortgages (hypothèque conventionelle) inscribed for more than 3 years*

After payment of the claims referred to in subparagraph (4), the Official Receiver or liquidator shall next pay the amount payable under any first ranking fixed and floating charge or mortgage *(hypotheque conventionelle)* inscribed for more than 3 years (articles 2150-1 and 2202-5 of the Code Civil Mauricien), provided that—

(a) any penalty interest or any other interest charge above the standard rate of interest payable under the agreement between debtor and creditor shall be deferred and paid along with unsecured creditors under section 331 of the Act; and

(b) not more than 3 years' interest calculated at this standard rate shall be payable under this level of priority *pari passu* with—

(i) any compensation for unjustified dismissal that accrues or crystallises before completion of the winding up; and

(ii) payment for termination of employment in accordance with the Employment Rights Act.

(6) *Rent: Landlord's special privilege*

After payment of the claims referred to in subparagraph (5), the Official Receiver or liquidator shall next pay any rent unpaid to any landlord of the debtor due and unpaid for the period of 6 months preceding the date of adjudication or the commencement of the winding up (article 2150-2 of the Code Civil Mauricien).

(7) *First ranking, fixed and floating charges and mortgages (hypothèque conventionele) inscribed for less than 3 years*

(a) After payment of the claims referred to in subparagraph (6), the Official Receiver or liquidator shall next pay the amount payable under any first ranking, fixed and floating charge or mortgage (*hypothèque conventionele*) inscribed for less than 3 years (article 2202-2255 of the Code Civil Mauricien), together with any interest not paid under the fifth priority referred to in subparagraph (5), provided that any penalty interest or other interest charge above the standard rate of interest payable under the agreement between debtor and creditor shall be deferred and paid along with unsecured creditors under section 311.

(b) The amount payable under any inscribed charge or mortgage, other than a first ranking, fixed and floating charge or mortgage (*hypotheque conventionele*).

(8) *Claims of victims of an accident*

After payment of the claims referred to in subparagraph (7), the Official Receiver or liquidator shall next pay the amount established to be due to the victim of an accident or to his heirs or relative including any medical and funeral expenses and damages for temporary incapacity (articles 2148-8 and 2152 of the Code Civil Mauricien).

(9) *Other privileges, securities and creditors*

After payment of the claims referred to in subparagraph (8), the Official Receiver or liquidator shall next pay the following claims in the ranking and order

provided for in the Code Civil Mauricien and in accordance with section 331 of the Act—

(a) the cost incurred by a creditor for the preservation of any movable of the debtor including the costs of storage and insurance (article 2150-4 of the Code Civil Mauricien);

(b) other privileges including the unpaid vendor's privilege or lien (article 2150-5 of the Code Civil Mauricien);

(c) privileges for architects and builders.

(10) *Amounts due to Government and its Agencies in relation to amounts due and unpaid for over 3 months*

After payment of the claims referred to in subparagraph (9) the Official Receiver or liquidator shall next pay the amount of all other arrears due and unpaid in relation to the taxes, charges and dues referred to in subparagraph (3) above which are due and unpaid for the period not exceeding 4 years prior to the date of adjudication or the commencement of the winding up which has not been paid under the third priority in subparagraph (3) above (articles 2148-3 and 2152 of the Code Civil Mauricien).

(11) *All other unsecured creditors who have proved in the bankruptcy or winding up including claims for—*

(a) judicial costs and Court fees (articles 2148-2 and 2152 of the Code Civil Mauricien);

(b) funeral expenses (article 2148-4 of the Code Civil Mauricien);

(c) expenses of an individual debtor's last illness (article 2148-5 of the Code Civil Mauricien);

(d) necessities sold to the debtor and his family during the year before the date of adjudication or the commencement of the winding up (article 2148-7 of the Code Civil Mauricien).

2. Conditions to priority of payments to preferential creditors

The claims listed in each of the subparagraphs of paragraph 1, other than subparagraph (1), rank in relation to each of the items within these subparagraphs respectively equally among themselves and, subject to any maximum payment level specified in any Act or Regulations, must be paid in full, unless the assets of the debtor are insufficient to meet them, in which case they abate in equal proportions.

3. Provisions concerning preferential payments to employees

The sum of 30,000 rupees in subparagraph (3) of paragraph 1, or any greater amount that is prescribed on the date of adjudication or the commencement of the winding up, continues to apply to that adjudication or winding up regardless of any change to that sum that is prescribed after the date of adjudication or the commencement of the winding up.

4. Subrogation of persons if payment has been made

If a payment has been made to a person ("A") on account of any preferential claim specified in this Schedule out of money advanced by a bank or some other person ("B") for that purpose, then ("B") has, in a winding up, the same right of priority in respect of the money so advanced as ("A") would have if the payment had not been made.

5. Priority given to person who distrains on goods

If a landlord or other person has distrained on goods or effects of the debtor during the month before the date of adjudication or the commencement of the winding up, the amount recovered by the landlord may be retained as an amount received by him under paragraph 1 (6).

6. Duty of receiver of floating charge and meaning of "floating charge"

(a) Any receiver of a floating charge shall distribute any proceeds held by the receiver for the purposes of distribution in the receivership in accordance with section 204 (2).

(b) In this Schedule—

"floating charge" includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge.

7. Saving provision for liquidation that has commenced

If the adjudication or winding up of a debtor has commenced before this Act came into force, that debtor's property must be applied in accordance with the priorities that applied prior to the commencement of this Act.

8. Provisions of this Schedule to prevail where conflict with the Code Civil Mauricien

Where there is any conflict between the provisions of this Schedule and the Code Civil Mauricien, provisions of this Schedule shall prevail.

[Fourth Sch. amended by s. 28 (e) of Act 9 of 2015 w.e.f. 14 May 2015.]

FIFTH SCHEDULE

[Section 54]

OFFICIAL RECEIVER'S GENERAL POWERS IN RELATION TO BANKRUPTCIES

The Official Receiver has the power to—

(a) hold property;

(b) commence, continue, discontinue and defend legal proceedings;

(c) with the leave of the Court, continue in the Official Receiver's name legal proceedings begun by the bankrupt before adjudication;

(d) refer a dispute to arbitration;

(e) compromise debts, claims and liabilities, present or future, actual or contingent, or ascertained or not, subsisting or believed to subsist between the bankrupt and any person, on whatever terms are agreed;

(f) make a compromise or an arrangement with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy;

(g) accept as consideration for the sale of any of the bankrupt's property money to be paid in the future, on terms (including terms as to security) that the Official Receiver may determine;

(h) make a compromise or an arrangement in respect of a claim that arises out of, or is incidental to, the bankrupt's property, whether it is a claim by the Official Receiver or a claim by a person against the Official Receiver;

(i) carry on the bankrupt's business, if it is necessary or advantageous in order to dispose of it, and for that purpose may employ and pay any person, including the bankrupt;

(j) use money in the bankrupt's estate for the repair, maintenance, upkeep or renovation of the bankrupt's property, whether or not the work is necessary to salvage the property;

(k) borrow money whether with or without providing security over the bankrupt's property;

(l) employ any person to do anything that must be done in the course of the administration of the bankruptcy, including the receipt and payment of money;

(m) appoint a lawyer;

(n) prove and draw a dividend in respect of any debt due to the bankrupt;

(o) if any of the bankrupt's property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances, divide it in its existing form among the creditors according to its estimated value;

(p) give receipts and sign discharges and releases for any money that the Official Receiver receives, so that the person who pays the money is effectively discharged from any responsibility for how the money is used;

(q) execute a power of attorney, deed or any other document for the purpose of carrying into effect the provisions of this Act;

(r) exercise in relation to the bankrupt's property any power conferred on a trustee under the Trusts Act or by the Court under that Act, and for the purposes of those powers the Official Receiver is a trustee of the bankrupt's property;

(s) exercise any authority or power or do any act in relation to the bankrupt's property that the bankrupt could have exercised or done if he was not bankrupt;

(t) in respect of any particular estate or estates—

(i) appoint an agent to act for the Official Receiver;

(ii) delegate to that agent any or all of the powers conferred by this Schedule;

(iii) revoke the agent's appointment;

(iv) set the agent's remuneration, which must be paid out of the estate.

SIXTH SCHEDULE

[Sections 118 and 148]

POWERS OF LIQUIDATORS

The liquidator of a company has power to do all or any of the following—

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

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

(c) appoint a lawyer;

(d) with the leave of the Committee of Inspection or the Court, pay any class of creditors in full;

(e) subject to section 152, make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not;

(f) compromise calls and liabilities for calls, debts and liabilities capable of resulting in debts and claims, present or future, actual or contingent, or ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability or claim and give a complete discharge;

(g) sell or otherwise dispose of the property of the company with the approval of the Committee of Inspection;

(h) act in the name and on behalf of the company and enter into deeds, contracts and arrangements in the name and on behalf of the company;

(i) prove, rank and claim in the bankruptcy or insolvency of a shareholder for any balance against that person's estate, and receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(j) 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 as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(k) borrow money whether with or without providing security over the company's assets;

(l) take action in his name as liquidator for transfer to the heir or executor of a deceased shareholder of any shares in the names of the deceased and to do in that name any other act necessary for obtaining payment of money due from a shareholder or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall be deemed to be due to the liquidator;

(m) call a meeting of creditors or shareholders for—

(i) the purpose of informing creditors or shareholders of progress in the liquidation;

(ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation;

(iii) such other purpose connected with the liquidation as the liquidator thinks fit;

(n) appoint an agent to do anything which the liquidator is unable to do.

SEVENTH SCHEDULE

[Sections 123 and 144]

PROCEEDINGS AT MEETINGS OF COMMITTEE OF INSPECTION

1. Frequency of meetings

The committee shall meet at such times as it from time to time appoints, and the liquidator or a member of the committee may also call a meeting of the committee as and when necessary.

2. Majorities

The committee may act by a majority of its members present at a meeting but may not act unless a majority of the committee is present.

3. Resignation

A member of the committee may resign by notice in writing signed by him and given to the liquidator.

4. Office becoming vacant

Where a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors or shareholders, as the case may be, the office of that member becomes vacant.

5. Removal of a member

A member of the committee may be removed by a resolution carried at a meeting of creditors where the member represents creditors or of shareholders where the member represents shareholders of which 7 days' notice has been given stating the object of the meeting.

6. Vacancy filled

A vacancy in the committee may be filled by appointment by the committee of—

(a) the same or another creditor or shareholder, as the case may be; or

(b) a person holding a general power of attorney from or, being an authorised director or representative of, a company which is a creditor or shareholder, as the case may be.

7. Continuing members may act

The continuing members of the committee may, if not less than 2, act, notwithstanding any vacancy in the committee.

EIGHTH SCHEDULE

[Section 190]

POWERS OF RECEIVERS

1. Subject to the provisions of this Schedule, a receiver of property of a company has power to do, in Mauritius and elsewhere, all things necessary or

convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

2. Without limiting the generality of paragraph 1, but subject to any provision of the Court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed—

(a) to enter into possession and take control of property of the company in accordance with the terms of that order or instrument;

(b) to lease, let on hire or dispose of property of the company;

(c) to grant options over property of the company on such conditions as the receiver may determine;

(d) to borrow money on the security of property of the company;

(e) to insure property of the company;

(f) to repair, renew or enlarge property of the company;

(g) to convert property of the company into money;

(h) to carry on any business of the company;

(i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company;

(j) to demand and recover, by action or otherwise, income of the property in receivership;

(k) to issue receipts for income recovered;

(l) to inspect, at any reasonable time, books or documents that relate to the property in receivership and that are in the possession or under the control of the company;

(m) to exercise, on behalf of the company, a right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company;

(n) to change the registered office or address for service of the company;

(o) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company;

(p) to draw, accept, make and endorse a bill of exchange or promissory note;

(q) —

(r) to engage or discharge employees on behalf of the company;

(s) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;

(t) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person;

(u) where a debt or liability is owed to the company – to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;

(v) to make or defend an application for the winding up of the company; and

(w) to refer to arbitration any question affecting the company.

3. The conferring by this Schedule on a receiver of powers in relation to property of a company does not affect any rights in relation to that property of any person other than the company.

4. In this Schedule, a reference, in relation to a receiver, to property of a company is, unless the contrary intention appears, a reference to the property of the company in relation to which the receiver was appointed.

[Eighth Sch. amended by s. 11 (n) of Act 4 of 2017 w.e.f. 20 May 2017.]

NINTH SCHEDULE

[Sections 366, 367 and 368]

RULES APPLYING TO CROSS-BORDER INSOLVENCY PROCEEDINGS

Preamble

The purpose of this Schedule is to provide effective mechanisms for dealing with cases of cross-border insolvency so far as to promote the objectives of—

(a) co-operation between courts and other competent authorities of Mauritius and foreign States involved in cases of cross-border insolvency;

(b) providing greater legal certainty for trade and investment;

(c) providing fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) providing protection and maximisation of the value of the debtor's assets; and

(e) facilitating the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Chapter I – General provisions

Article 1 – Scope of application

(1) Except as provided in paragraph (2), this Schedule applies where—

(a) assistance is sought in Mauritius by a foreign court or a foreign representative in connection with a foreign proceeding;

(b) assistance is sought in a foreign State in connection with a Mauritius insolvency proceeding; or

(c) a foreign proceeding and a Mauritius insolvency proceeding in respect of the same debtor are taking place concurrently; or

(d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participation in, a Mauritius insolvency proceeding.

(2) This Schedule does not apply to a financial institution or bank licensed under the Banking Act that is subject to appointment of a statutory conservator under that Act.

Article 2 – Definitions

For the purposes of this Schedule—

(a) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

(b) "foreign main proceeding" means a foreign proceeding taking place in the state where the debtor has the centre of its main interests;

(c) "foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this Article;

(d) "foreign representative" means a person or body, including one appointed to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(e) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(f) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

(g) "Supreme Court" or "Court" means the Bankruptcy Division of the Supreme Court of Mauritius until such time as a Commercial Division of the Supreme Court is established and thereafter shall mean that Division;

(h) "Insolvency administrator" means—

(i) a judicial manager appointed under the Insurance Act; or

(ii) the Official Receiver or liquidator under this Act; or

(iii) a receiver within the meaning of this Act; or

(iv) a liquidator appointed under any other Act; or

(v) an administrator appointed under a scheme for voluntary administration of companies under Sub-part IV of Part III;

(i) "Mauritius insolvency proceedings" means a collective judicial or administrative proceeding pursuant to the law in Mauritius relating to the bankruptcy, liquidation, receivership, judicial management, statutory management, or voluntary administration of a debtor, or the reorganisation of the debtor's affairs, 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.

Article 3 – International obligations of Mauritius

No action may be taken under this Schedule that conflicts with an obligation of Mauritius arising out of any treaty or other form of agreement to which Mauritius is a party with one or more other States.

Article 4 – Supreme Court to have jurisdiction

The functions referred to in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the Supreme Court.

Article 5 – Authorisation of insolvency administrator to act in a foreign State

An insolvency administrator is authorised to act in a foreign State on behalf of a Mauritius insolvency proceeding, as permitted by the applicable foreign law.

Article 6 – Public policy exception

(1) Nothing in this Schedule prevents the Supreme Court from refusing to take an action governed by this Schedule if the action would be manifestly contrary to the public policy of Mauritius.

(2) Before the Court refuses to take an action under paragraph (1) of this article, the Court shall consider whether it is necessary for the Solicitor-General to appear and be heard on the question of the public policy of Mauritius.

Article 7 – Additional assistance under other laws

Nothing in this Schedule limits the power of a court or an insolvency administrator to provide additional assistance to a foreign representative under other laws of Mauritius.

Article 8 – Interpretation

In the interpretation of this Schedule, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Chapter II – Access of foreign representatives and creditors to courts in Mauritius

Article 9 – Right of direct access

A foreign representative is entitled to apply directly to the Supreme Court.

Article 10 – Limited jurisdiction

The sole fact that an application pursuant to this Schedule is made to the Supreme Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

Article 11 – Application by a foreign representative to commence a Mauritius insolvency

A foreign representative is entitled to apply to commence a Mauritius insolvency proceeding if the conditions for commencing such a proceeding are otherwise met.

Article 12 – Participation of a foreign representative in a Mauritius insolvency proceeding

Upon recognition by the Supreme Court of a foreign proceeding, the foreign representative is entitled to participate in a Mauritius insolvency proceeding regarding the debtor.

Article 13 – Access of foreign creditors to a Mauritius insolvency proceeding

(1) Subject to paragraph (2) of this Article, foreign creditors have the same rights regarding the commencement of, and participation in, a Mauritius insolvency proceeding as creditors in Mauritius.

(2) Paragraph (1) of this Article does not affect the ranking of claims in a Mauritius insolvency proceeding or the exclusion of foreign tax and social security claims from such a proceeding.

Article 14 – Notification to foreign creditors of a Mauritius insolvency proceeding

(1) Whenever, under a Mauritius insolvency proceeding, notification is to be given to creditors in Mauritius, such notification shall also be given to the known creditors that do not have addresses in Mauritius. The Supreme Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters *rogatory* or other, similar formality is required.

(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall—

(a) indicate a reasonable time period for filing claims and specify the place for their filing;

(b) indicate whether secured creditors need to file their secured claims; and

(c) contain any other information required to be included in such a notification to creditors pursuant to the laws of Mauritius and the orders of the Court.

Chapter III – Recognition of a foreign proceeding and relief

Article 15 – Application for recognition of a foreign proceeding

(1) A foreign representative may apply to the Supreme Court for recognition of the foreign proceedings in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by—

(a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of Mauritius.

Article 16 – Presumptions concerning recognition

(1) If the decision or certificate referred to in paragraph (2) of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the Supreme Court is entitled to so presume.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual is presumed to be the centre of the debtor's main interests.

Article 17 – Decision to recognise a foreign proceeding

(1) Subject to article 6, a foreign proceeding shall be recognised if—

(a) the foreign proceeding is a proceeding within the meaning of subparagraph (1) of article 2;

(b) the foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;

(c) the application meets the requirements of paragraph (2) of article 15; and

(d) the application has been submitted to the Supreme Court.

(2) The foreign proceeding shall be recognised—

(a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or

(b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) As soon as practicable, after the Court recognises the foreign proceeding under paragraph (1) of this Article, the foreign representative shall notify the debtor, in the prescribed form, that the application has been recognised.

(5) The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18 – Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Supreme Court promptly of—

(a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Article 19 — Relief that may be granted upon application for recognition of a foreign proceeding

(1) From the time of filing an application for recognition until the application is decided upon, the Supreme Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(a) staying execution against the debtor's assets;

(b) entrusting the administration or realisation of all or part of the debtor's assets located in Mauritius to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(c) any relief mentioned in paragraph (1) (c) and (d) of article 21.

(2) As soon as practicable, after the Court grants relief under paragraph (1) of this Article, the foreign representative shall notify the debtor, in the prescribed form, of the relief that has been granted.

(3) Unless extended under paragraph (1) (f) of article 21, the relief granted under this Article terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

Article 20 – Effects of recognition of a foreign main proceeding

(1) Upon recognition by the Supreme Court of a foreign proceeding that is a foreign main proceeding—

(a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;

(b) execution against the debtor's assets is stayed; and

(c) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended.

(2) Paragraph (1) of this Article 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) Paragraph (1) (a) of this Article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor

(4) Paragraph (1) of this Article does not affect the right to request the commencement of a Mauritius insolvency proceeding or the right to file claims in such a proceeding.

Article 21 — Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition by the Supreme Court of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—

(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities, to the extent they have not been stayed under paragraph (1) (a) of article 20;

(b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1) (b) of article 20;

(c) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1) (c) of article 20;

(d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's assets located in Mauritius to a foreign representative or another person designated by the Court; and

(f) extending relief granted under paragraph (1) of article 19.

(2) Upon recognition by the Supreme Court of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Mauritius to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Mauritius are adequately protected.

(3) In granting relief under this Article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the laws of Mauritius, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 22 – Protection of creditors and other interested persons

(1) In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph (3) of this Article, the Supreme Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under article 19 or 21 to conditions it considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.

(4) The Court must, on application of the statutory receiver, terminate the relief granted under article 19 or 21 if—

(a) an application for recognition has been made in respect of a debtor that is a bank or financial institution licensed under the Banking Act;

(b) the Court has granted that application or the Court has granted relief under article 19; and

(c) the debtor is placed in statutory receivership under the Banking Act after that application or relief has been granted.

Article 23 – Actions to avoid acts detrimental to creditors

(1) Upon recognition by the Supreme Court of a foreign proceeding, the foreign representative has standing to initiate any action that an insolvency administrator may take in respect of a Mauritius insolvency proceeding that relates to a transaction (including any gifts or improvement of property or otherwise), security, or charge that is voidable or may be set aside or altered.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the laws of Mauritius, should be administered in the foreign non-main proceeding.

(3) To avoid any doubt, nothing in paragraph (1) of this Article affects the doctrine of relation back as it is applied in Mauritius.

Article 24 – Intervention by a foreign representative in Mauritius insolvency proceeding

Upon recognition by the Supreme Court of a foreign proceeding, the foreign representative may, provided the requirements of the laws of Mauritius are met, intervene in any proceeding in which the debtor is a party.

Chapter IV – Co-operation with foreign courts and foreign representative

Article 25 – Co-operation and direct communication between the Supreme Court and foreign courts or foreign representatives

(1) In matters referred to in paragraph (1) of article 1, the Supreme Court shall co-operate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26 – Co-operation and direct communication between the insolvency administrator and foreign courts or foreign representatives

(1) In matters referred to in paragraph (1) of Article, an insolvency administrator shall, in the exercise of its functions and subject to the supervision of the Supreme Court, co-operate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency administrator is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27 – Forms of co-operation

Co-operation referred to in articles 25 and 26 may be implemented by any appropriate means, including—

(a) appointment of a person or body to act at the direction of the Supreme Court;

(b) communication of information by any means considered appropriate by the Court;

(c) co-ordination of the administration and supervision of the debtor's assets and affairs;

(d) approval or implementation by courts of agreements concerning the co-ordination of proceedings; and

(e) co-ordination of concurrent proceedings regarding the same debtor.

Chapter V – Concurrent proceedings

Article 28 – Commencement of a Mauritius insolvency proceeding after recognition of a foreign main proceeding

After recognition by the Supreme Court of a foreign main proceeding, a Mauritius insolvency proceeding may be commenced only if the debtor has assets in Mauritius; the effects of that proceeding shall be restricted to the assets of the debtor that are located in Mauritius and, to the extent necessary to implement co-operation and co-ordination under articles 25, 26 and 27 to other assets of the debtor that, under the laws of Mauritius, should be administered in that proceeding.

Article 29 – Co-ordination of a Mauritius insolvency proceeding and a foreign proceeding

Where a foreign proceeding and a Mauritius insolvency proceeding are taking place concurrently regarding the same debtor, the Supreme Court shall seek co-operation and co-ordination under articles 25, 26 and 27, and the following shall apply—

(a) when the Mauritius insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed—

(i) any relief granted under article 19 or 21 must be consistent with the Mauritius insolvency proceeding; and

(ii) if the foreign proceeding is recognised in Mauritius as a foreign main proceeding, article 20 does not apply;

(b) when the Mauritius insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceedings—

(i) any relief in effect under article 19 or 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the Mauritius insolvency proceeding; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of article 20 shall be modified or terminated pursuant to paragraph (2) of article 20 if inconsistent with the Mauritius insolvency proceeding; and

(c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the laws of Mauritius, should be administered in the foreign non-main proceeding or concerns information required in that proceed.

Article 30 – Co-ordination of more than one foreign proceeding

In matters referred to in paragraph (1) of article 1, in respect of more than one foreign proceeding regarding the same debtor, the Supreme Court shall seek co-operation and co-ordination under articles 25, 26 and 27, and the following shall apply—

(a) any relief granted under article 19 or article 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if 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 relief for the purpose of facilitating co-ordination of the proceedings.

Article 31 – Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a Mauritius insolvency proceeding, proof that the debtor is insolvent.

Article 32 – Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a Mauritius insolvency proceeding regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment to the creditor has already received.

TENTH SCHEDULE

[Sections 374 and 378]

PUBLIC REGISTER OF BANKRUPTS

(This Schedule applies to the public register required to be maintained under section 378 by the Director)

1. When public register to be accessible

(1) A public register shall be available for access and searching by members of the public during business hours on a working day.

(2) The Director may refuse access to a public register or suspend the operation of a public register, in whole or in part—

(a) if the Director considers that for reasons of audit or technical maintenance it is not practical to provide temporary access to the register; or

(b) for any other reason that is prescribed by regulations made under this Act.

2. General information to be held in public registers

(1) The public registers shall contain the following information in respect of a person who is or has been bankrupt—

(a) the person's full name;

(b) whether the person is currently bankrupt, or has been discharged from bankruptcy;

(c) the bankruptcy number;

(d) the person's address as contained in his statement of affairs, or application for adjudication or, if he has notified the Official Receiver of a change of address, that address, or in the case of adjudication on a creditor's application, his address contained in that application;

(e) the person's occupation and current employment status, if known;

(f) in the case of an adjudication by the Court, the time and date of the adjudication;

(g) if the person is a discharged bankrupt, the date, type, and conditions (if any) of discharge;

(h) if the bankruptcy was annulled under section 67 (1) (b) or (c) under which of those provisions it was annulled;

(i) if the Court has refused to discharge the person from bankruptcy, that information;

(j) if the Court has suspended the discharge from bankruptcy, that information;

(k) any other prescribed information or documents.

(2) Subject to paragraph 1, the information listed in subsection (1) must be available to any member of the public.

(3) A public register must not contain any information in relation to a person whose bankruptcy was annulled under section 67 (1) (a).

(4) All information relating to a person who has been adjudicated bankrupt and discharged from bankruptcy must be removed from the public register—

(a) 5 years after the date of discharge; but

(b) in the case of a conditional discharge, 5 years after the discharge becomes unconditional.

(5) All information relating to a person who has been adjudicated bankrupt but whose bankruptcy has been annulled under section 67 (1) (b) or (c) must be removed 7 years after the date of adjudication from the public register.

3. Restricted information that may be held in public register

(1) The public register may contain any or all of the documents set out in section 27 (3) in respect of a person who is or has been bankrupt.

(2) A member of the public shall not have access to the documents contained in the public register under subsection (1) in respect of that person unless that person is entitled to inspect those documents under section 27 (3).

4. When Insolvency Service may omit, remove, restrict access to, or amend, information contained in public registers

(1) The Director may omit, remove, or restrict access to information contained in a public register in respect of a person if the Court on the application of that person or the Director considers that the disclosure of the information *via* the public register would be prejudicial to that person's safety or the safety of his family.

(2) The Director may amend the information contained in a public register in order to update the information or correct any error in, or omission from, the information.

(3) The Director may refuse to provide access to any information in a public register if, in the Director's opinion, it is impractical to provide the volume of information requested.

5. Search of public registers

(1) A person may only search the public registers in accordance with this Act or regulations made under this Act.

(2) The public registers may be searched only by reference to the following criteria—

(a) the bankruptcy number;

(b) the name, or any part of the name of a person;

(c) the name of a Court;

(d) insolvency status;

(e) the date of adjudication or discharge, by reference to a range of dates;

(f) any combination of the criteria in paragraphs (a) to (e);

(g) any other prescribed criteria.

(3) In subsection (2) (d), "insolvency status" means that a person—

(a) is currently bankrupt; or

(b) is a discharged bankrupt; or

(c) is a discharged bankrupt subject to conditions of discharge; or

(d) was adjudicated bankrupt but the adjudication was annulled under section 67 (1) (b) or (c).

(4) The public registers may be searched—

(a) by any individual, or by any person with the consent of that individual, for the purpose of searching for information about that individual;

(b) by any person for the purpose of ascertaining whether another person is bankrupt, is a discharged bankrupt, or is currently admitted to the no asset procedure;

(c) by any person for any purpose related to the bankruptcy of a person;

(d) by any person for the purposes of—

(i) facilitating the compliance, audit, and other supporting and administrative functions of the Official Receiver, the Insolvency Service, the Court, or any other person required to be provided under this Act or any other enactment; and

(ii) facilitating the enforcement functions and the exercise of the powers of the Official Receiver, the Insolvency Service, the Courts, or any other person required to be excused under this Act or any other enactment.

6. Information contained in public registers may be used for statistical or research purposes

Nothing in this Sub-part prevents the use of information contained in the public registers for statistical or research purposes if the information—

(a) does not identify any person; and

(b) is not published in any form that could reasonably be expected to identify any person.

7. Insolvency Service and Official Receiver not liable for act or omission

The Insolvency Service and the Official Receiver and any officer or employee in the Insolvency Service shall not be liable at the suit of any person for any act or omission in relation to the maintenance of a public register under this Sub-part or done or omitted to be done in good faith and with reasonable care.

ELEVENTH SCHEDULE

[Section 406]

OATH OF CONFIDENTIALITY IN THE SUPREME COURT OF MAURITIUS

I, ... being appointed

do hereby swear/solemnly affirm that I will, to the best of my judgment, act for the furtherance of the objects of the [Insolvency Service/Companies Supervisory Committee] and shall not, on any account and at any time, disclose, otherwise than with the authorisation of the [Insolvency Service/Companies Supervisory Committee] or where it is strictly necessary for the performance of my duties, any confidential information obtained by me during or after my relationship with the [Insolvency Service/Companies Supervisory Committee].

Taken before me, ...

The Master and Registrar of the Supreme Court on ..... .
