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GOVERNMENT GAZETTE

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The following Act was passed by Parliament on 1 October 2018 and assented to by the President on 31 October 2018:—

INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

(No. 40 of 2018)

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REPUBLIC OF SINGAPORE

No. 40 of 2018.

I assent.

HALIMAH YACOB,
President.
31 October 2018.

LS

An Act to amend and consolidate the written laws relating to the making and approval of a compromise or an arrangement with the creditors of a company or an individual, receivership, corporate insolvency and winding up, individual insolvency and bankruptcy, and the public administration of insolvency, to provide for the regulation of insolvency practitioners, to provide for connected matters, to repeal the Bankruptcy Act (Chapter 20 of the 2009 Revised Edition) and to make consequential and related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1

PRELIMINARY

Short title and commencement

1. This Act is the Insolvency, Restructuring and Dissolution Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

General interpretation

2.—(1) In this Act, unless the context otherwise requires —

"banking corporation" means a bank that holds a valid licence under section 7 or 79 of the Banking Act (Cap. 19);

"bankrupt" means —

(*a*) an individual debtor who has been adjudged bankrupt by a bankruptcy order; or

(*b*) where a bankruptcy order has been made against a firm, each of the partners in the firm;

"company" has the meaning given by section 4(1) of the Companies Act (Cap. 50);

"contributory" has the meaning given by section 4(1) of the Companies Act;

"corporation" has the meaning given by section 4(1) of the Companies Act;

"Court" means the High Court;

"creditors' committee", in relation to a bankruptcy, means a committee appointed under section 331;

"foreign company" has the meaning given by section 4(1) of the Companies Act;

"insolvency practitioner's licence" means a licence granted under section 51;

"liability" means a liability to pay money or money's worth, regardless whether such liability is present or future, certain or contingent or of an amount that is fixed or liquidated or that is

capable of being ascertained by fixed rules or as a matter of opinion, and includes any such liability arising —

(*a*) under any written law;

(*b*) under contract, tort or bailment;

(*c*) as a result of a breach of trust by the person liable; or

(*d*) out of an obligation to make restitution;

"licensed insolvency practitioner" and "licensee" mean the holder of a licence granted under section 51;

"limited liability partnership" has the meaning given by section 4(1) of the Limited Liability Partnerships Act (Cap. 163A);

"liquidator" includes the Official Receiver when acting as the liquidator of a corporation;

"member", in relation to a company, means a member of a company mentioned in section 19(6) or (6A) of the Companies Act;

"Minister" means —

(*a*) except as provided in paragraph (*b*), the Minister charged with the responsibility for administration of affairs of insolvent persons and insolvent companies; and

(*b*) for the purposes of sections 124(1)(*g*) and (2)(*c*), 125(5), 127(3) and 198, the Minister charged with the responsibility for registration of companies;

"Official Assignee" means the Official Assignee appointed under section 16(1) and includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an Assistant Official Assignee;

"Official Receiver" means the Official Receiver appointed under section 17(1) and includes a Deputy Official Receiver, a Senior Assistant Official Receiver and an Assistant Official Receiver;

"property" includes —

(*a*) money, goods, things in action, land and every description of property, wherever situated; and

(*b*) obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to property;

"public accountant" means a person who is registered or deemed to be registered in accordance with the Accountants Act (Cap. 2) as a public accountant;

"Registrar" means the Registrar of the Supreme Court and includes a Deputy Registrar or an Assistant Registrar of the Supreme Court;

"Registrar of Companies" means the Registrar of Companies appointed under section 8 of the Companies Act and includes any Deputy or Assistant Registrar of Companies;

"regulations" means regulations made under section 449;

"Rules" means the Rules of Court made under section 448;

"solicitor" means an advocate and solicitor of the Supreme Court;

"subsidiary" has the meaning given by section 5 of the Companies Act;

"transaction" includes any gift, agreement or arrangement, and any reference to entering into a transaction is to be construed accordingly;

"trustee", in relation to a bankruptcy and a bankrupt, means the trustee of the bankrupt's estate and includes the Official Assignee when acting as trustee of the bankrupt's estate;

"trustee in bankruptcy" means a person appointed under section 36 as trustee of a bankrupt's estate.

(2) For the purposes of Parts 4 to 12 and 23, a person who is not a member of a company, but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a

member of the company, and references to a member or members are to be read accordingly.

(3) Unless the contrary intention appears, a reference in this Act to a Part or a Division of a Part is to be construed so as to include a reference to any subsidiary legislation made in relation to that Part or that Division.

PART 2

JURISDICTION, POWERS AND PROCEDURE OF COURT

Division 1 — Jurisdiction

High Court to be court that has jurisdiction in corporate and individual insolvency, etc.

3. Subject to any other written law, the High Court is the court that has jurisdiction in corporate insolvency and winding up, individual insolvency and bankruptcy, and related matters under this Act.

Exercise of jurisdiction in chambers

4. Subject to this Act and the Rules, any judge of the Court may exercise in chambers the whole or any part of the Court's jurisdiction under this Act.

Jurisdiction of Registrar under this Act

5. Subject to the Rules —

(*a*) the Registrar has all the powers and jurisdiction of the Court; and

(*b*) any order made or act done by the Registrar in the exercise of those powers and jurisdiction is, subject to an appeal to a judge in chambers, deemed to be the order or act of the Court.

General powers of Court under this Act

6.—(1) Subject to this Act, the Court, when exercising its jurisdiction under this Act, has full power to decide all questions of priorities and all other questions, whether of law or fact, that may arise

in any case or matter under this Act coming within the cognizance of the Court, or that the Court considers expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case or matter.

(2) The Court may adjourn any case or matter under this Act coming within the cognizance of the Court, or make such order or give such direction as the Court thinks fit for the just, expeditious and economical disposal of any such case or matter, without requiring the parties to appear in person, by giving written notice of the adjournment, order or direction to all parties concerned.

(3) Where any debtor or bankrupt, or any other person, fails to obey any order or direction given under this Act by the Court, the Official Assignee or the Official Receiver, the Court may, on the application of the Official Assignee, the Official Receiver or any other person duly authorised by the Official Assignee or Official Receiver, or on the Court's own motion —

(*a*) order that debtor, bankrupt or person to comply with that order or direction; and

(*b*) if the Court thinks fit, make an order for the committal of that debtor, bankrupt or person.

(4) The power given by subsection (3) is in addition to any other right or remedy in respect of the failure to obey the order or direction.

Power to review orders

7. The Court may review, rescind or vary any order made by the Court when exercising its jurisdiction under this Act.

Appeals under this Act

8.—(1) Any order made by the Court in any matter under this Act is, at the instance of any person aggrieved, subject to appeal in the same way as an order of the Court in any other matter is for the time being appealable.

(2) For the purposes of this section, the Official Assignee and the Official Receiver are deemed to be aggrieved by the refusal of any application made to the Court by the Official Assignee and the refusal

of any application made to the Court by the Official Receiver, respectively.

Criminal jurisdiction of District and Magistrate's Courts

9. Despite anything to the contrary in the Criminal Procedure Code (Cap. 68), a District Court or Magistrate's Court has jurisdiction to hear and determine all offences under this Act and has power to impose the full penalty or punishment in respect of any offence under this Act.

Division 2 — Procedure

Where no specific procedure provided

10.—(1) In any matter of practice or procedure for which no specific provision has been made by this Act, the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted.

(2) Where in respect of any matter of practice or procedure it is not possible to apply subsection (1), the Court may make such orders and give such directions as are likely to secure substantial justice between the parties.

Power to adjourn proceedings

11. The Court may at any time adjourn any proceedings before the Court upon such terms, if any, as the Court thinks fit.

Power to amend written process, etc.

12. The Court may at any time amend any written process or modify the procedure for any proceedings upon such terms, if any, as the Court thinks fit.

Power to extend time

13. Where by this Act the time for doing any act or thing is limited, the Court may extend the time, either before or after the expiration of the time, upon such terms, if any, as the Court thinks fit.

Manner of taking evidence

14. Subject to the Rules, the Court may in any matter take the whole or any part of any evidence either orally or by interrogatories or upon affidavit or by commission abroad.

Costs to be in Court's discretion

15. Subject to this Act and the Rules, the costs of and incidental to any proceedings in the Court are in the discretion of the Court.

PART 3

OFFICIAL ASSIGNEE, OFFICIAL RECEIVER AND INSOLVENCY PRACTITIONERS

Division 1 — Official Assignee and Official Receiver

Appointment of Official Assignee

16.—(1) The Minister may appoint a person to be the Official Assignee of the estates of bankrupts and for the purposes of this Part and Parts 13 to 23.

(2) Judicial notice is to be taken of the appointment of the Official Assignee.

(3) The Official Assignee must act under the general authority and directions of the Minister, but is also an officer of the Court.

(4) The Minister may —

(*a*) appoint a Deputy Official Assignee, such number of Senior Assistant Official Assignees and Assistant Official Assignees, and such other officers, either temporary or permanent, as the Minister thinks necessary, for carrying this Part and Parts 13 to 23 into effect; and

(*b*) assign to the Deputy Official Assignee and any Senior Assistant Official Assignee, Assistant Official Assignee or other officer such duties as the Minister thinks fit.

(5) Every Deputy Official Assignee, Senior Assistant Official Assignee and Assistant Official Assignee appointed under subsection (4) has, during his or her tenure of office, all the status,

rights and powers (except the power of delegation under section 20(1)), and is subject to all the liabilities, of the Official Assignee.

Appointment of Official Receiver

17.—(1) The Minister may appoint a person to be the Official Receiver for the purposes of this Part and Parts 4 to 12, 22 and 23.

(2) Judicial notice is to be taken of the appointment of the Official Receiver.

(3) The Official Receiver must act under the general authority and directions of the Minister, but is also an officer of the Court.

(4) The Minister may —

(*a*) appoint a Deputy Official Receiver, such number of Senior Assistant Official Receivers and Assistant Official Receivers, and such other officers, either temporary or permanent, as the Minister thinks necessary, for carrying this Part and Parts 4 to 12, 22 and 23 into effect; and

(*b*) assign to the Deputy Official Receiver and any Senior Assistant Official Receiver, Assistant Official Receiver or other officer such duties as the Minister thinks fit.

(5) Every Deputy Official Receiver, Senior Assistant Official Receiver and Assistant Official Receiver appointed under subsection (4) has, during his or her tenure of office, all the status, rights and powers (except the power of delegation under section 20(1)), and is subject to all the liabilities, of the Official Receiver.

Removal of Official Assignee or Official Receiver

18. When the Official Assignee or the Official Receiver is removed from office, notice of the order removing the Official Assignee or the Official Receiver (as the case may be) must be published in the *Gazette*.

Official names of Official Assignee and Official Receiver

19.—(1) The Official Assignee has the following official names:

(*a*) where the Official Assignee has been appointed as the interim receiver of a debtor's property under section 324 — "The Official Assignee of the Property of (name of debtor), a Debtor";

(*b*) where the Official Assignee is acting as the receiver and trustee of the estate of a bankrupt under Part 17 — "The Official Assignee of the Estate of (name of bankrupt), a Bankrupt";

(*c*) where the Official Assignee is acting as the trustee of the estate of a deceased debtor in bankruptcy under section 419 — "The Official Assignee of the Estate of (name of deceased debtor), a Deceased Debtor".

(2) Where the Official Receiver is acting in the Official Receiver's capacity as a liquidator under this Act, the Official Receiver has the official name "The Official Receiver and liquidator of (name of corporation in respect of which the Official Receiver is appointed as liquidator)".

(3) The Official Assignee and the Official Receiver may, by the applicable official names mentioned in subsections (1) and (2), respectively —

(*a*) sue and be sued;

(*b*) hold property of every description;

(*c*) enter into contracts or any engagements binding on the Official Assignee and the Official Receiver, respectively, and their respective successors in office; and

(*d*) do all other acts necessary or expedient to be done in the execution of the offices of the Official Assignee and the Official Receiver, respectively.

Delegation of powers and functions by Official Assignee and Official Receiver

20.—(1) Subject to this Act, the Official Assignee and the Official Receiver may, by a written instrument of delegation under the hand of the Official Assignee and the Official Receiver, respectively, delegate to any person all or any of the powers or functions of the Official Assignee and the Official Receiver, respectively, under this Act (except the power of delegation under this section), so that such power or function may be exercised by the delegate with respect to any particular matter or class of matters specified in the instrument of delegation.

(2) Any delegation made under this section does not prevent the Official Assignee or the Official Receiver (as the case may be) from exercising the power or function delegated.

(3) The Official Assignee and the Official Receiver may at any time revoke any delegation made under this section by the Official Assignee and the Official Receiver, respectively.

Official Assignee and Official Receiver deemed to be public servants

21. The Official Assignee, the Official Receiver and every individual appointed by the Minister under section 16(4) or 17(4) are deemed to be public servants within the meaning of the Penal Code (Cap. 224).

General duties of Official Assignee as regards bankrupt's conduct and affairs

22.—(1) The Official Assignee has the following duties as regards a bankrupt:

(*a*) to investigate the conduct and affairs of the bankrupt, and report to the Court as to whether there is reason to believe that the bankrupt has committed any act that constitutes an offence under this Act or under section 421, 422, 423 or 424 of the Penal Code, or that would otherwise justify the Court in refusing, suspending or qualifying an order for the bankrupt's discharge;

(*b*) to make such other reports concerning the conduct of the bankrupt as the Court may direct or as are prescribed;

(*c*) to take such part as may be directed by the Court or as is prescribed, in any examination of the bankrupt and other persons;

(*d*) to take such part and give such assistance in relation to the prosecution of any fraudulent bankrupt or any other person charged with an offence under this Act, as the Court may direct or as is prescribed.

(2) A report by the Official Assignee under subsection (1) is, in any proceedings, prima facie evidence of the facts stated in the report.

(3) In this section, the conduct and affairs of a bankrupt include the bankrupt's conduct and affairs before the making of the bankruptcy order against the bankrupt.

General duties of Official Assignee as regards estate of bankrupt

23.—(1) The Official Assignee has the following duties as regards the estate of a bankrupt administered by the Official Assignee:

(*a*) to act as the receiver of the bankrupt's estate and, where a special manager has not been appointed under section 379, as the manager of the estate;

(*b*) to raise money or make advances for the purposes of the estate, and to authorise the special manager (if any) to raise money or make advances for the like purposes, in any case where it appears necessary to do so in the interests of the creditors;

(*c*) to summon and preside at all meetings of creditors held under this Part or Parts 13 to 21;

(*d*) to issue forms of proxy for use at the meetings of creditors;

(*e*) to report to the creditors as to any proposal that the Official Assignee makes with respect to the mode of liquidating the bankrupt's affairs;

(*f*) to advertise the bankruptcy order, the date of any public examination and such other matters as may be necessary to advertise.

(2) For the purpose of carrying out the Official Assignee's duties as receiver or manager, the Official Assignee has the same powers as if the Official Assignee were a receiver and manager appointed by the Court.

(3) The Official Assignee must, as far as practicable, consult the creditors with respect to the management of the bankrupt's estate, and may for that purpose, if the Official Assignee thinks it advisable, summon meetings of the persons claiming to be creditors.

(4) The Official Assignee must account to the Court and pay over all moneys and deal with all securities in such manner as the Court may, subject to this Act, direct.

Discretion of Official Assignee in administration of estate of bankrupt

24.—(1) Subject to this Part and Parts 13 to 22, the Official Assignee has discretion as to the administration of the property of a bankrupt.

(2) Subject to this Part and Parts 13 to 22, the Official Assignee must, in the administration of the estate of a bankrupt, have regard to any direction that is given by resolution of the creditors at any general meeting and to any advice given by the creditors' committee.

(3) Where any direction given to the Official Assignee by the creditors of a bankrupt at any general meeting is in conflict with any advice given to the Official Assignee by the creditors' committee, the direction given by the general meeting of creditors prevails.

Power to administer oaths

25. The Official Assignee may administer oaths for the purposes of any matters or proceedings under this Act or for the purpose of taking affidavits.

Official Assignee's accounts

26.—(1) The Official Assignee must, for such period as may be prescribed, keep in such form and manner as the Official Assignee determines —

(*a*) an account of the Official Assignee's receipts and payments in respect of the Official Assignee's administration of the estate of a bankrupt; and

(*b*) an account of the Official Assignee's receipts and payments in respect of the Official Assignee's administration of a debt repayment scheme under Part 15.

(2) The Official Assignee must, upon payment of the prescribed fee, permit —

(*a*) the inspection of an account mentioned in subsection (1)(*a*) by the bankrupt, any creditor who has proved the creditor's debt in the bankruptcy or any other interested person; and

(*b*) the inspection of an account mentioned in subsection (1)(*b*) by the debtor to whom the debt repayment scheme relates, any creditor who has proved the creditor's debt under the debt repayment scheme or any other interested person.

(3) Every account mentioned in subsection (1) must be audited at least once in each year by such officer as the Minister may appoint.

(4) For the purposes of the audit under subsection (3), the Official Assignee must —

(*a*) produce to the auditing officer such books; and

(*b*) furnish the auditing officer with such vouchers and information,

as the auditing officer may require.

Records to be kept by Official Assignee

27.—(1) The Official Assignee must, for such period as may be prescribed, keep records containing entries or minutes of proceedings at any meeting held under this Part or Parts 13 to 22 and of such other matters as may be prescribed.

(2) Any creditor of —

(*a*) a bankrupt; or

(*b*) a debtor mentioned in Part 15,

may, upon payment of the prescribed fee and subject to the control of the Court, personally or by the creditor's agent, inspect any record kept by the Official Assignee under subsection (1) that pertains to that bankrupt or debtor, as the case may be.

Bankruptcy Estates Account and Debt Repayment Schemes Account

28.—(1) The Official Assignee must keep with such bank as the Official Assignee thinks fit —

(*a*) an account, to be called the Bankruptcy Estates Account, into which all moneys received by the Official Assignee under this Part, Part 13 or 14 or Parts 16 to 22 must, subject to this Act, be paid; and

(*b*) an account, to be called the Debt Repayment Schemes Account, into which all moneys received by the Official Assignee under Part 15 must, subject to this Act, be paid.

(2) All payments out of moneys standing to the credit of the Official Assignee in the Bankruptcy Estates Account or the Debt Repayment Schemes Account are to be made by the bank with which the Bankruptcy Estates Account or the Debt Repayment Schemes Account (as the case may be) is kept, in such manner as the Official Assignee thinks fit.

Investment of surplus funds in Bankruptcy Estates Account and Debt Repayment Schemes Account

29.—(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account or the Debt Repayment Schemes Account is in excess of the amount that, in the opinion of the Official Assignee, is required for the time being to meet demands in respect of insolvent estates or debt repayment schemes administered under Part 15, as the case may be, the Official Assignee must —

(*a*) notify the excess to the Accountant-General; and

(*b*) pay over the whole or any part of the excess, as the Accountant-General may require, to such account as the Accountant-General may direct.

(2) The Accountant-General may invest the sums paid over under subsection (1)(*b*), or any part of those sums, in trustee securities to be placed to the credit of the account mentioned in subsection (1)(*b*).

(3) Where, in the opinion of the Official Assignee, any part of the money paid over from the Bankruptcy Estates Account or the Debt Repayment Schemes Account under subsection (1)(*b*) and invested under subsection (2) is required to meet any demand in respect of insolvent estates or debt repayment schemes administered under Part 15 (as the case may be) the Official Assignee must notify the Accountant-General of the amount so required.

(4) The Accountant-General must repay the Official Assignee such sum as may be required under subsection (3) to the credit of the Bankruptcy Estates Account or the Debt Repayment Schemes Account (as the case may be) and for that purpose, the Accountant-General may direct the sale of such part of the securities as may be necessary.

(5) The income derived from any investment under subsection (2) forms part of the Consolidated Fund, and regard is to be had to the amount thus derived in fixing the fees payable in respect of proceedings in bankruptcy and the administration of debt repayment schemes under Part 15.

(6) Any profits on the sale of any of the securities placed to the credit of the Bankruptcy Estates Account or the Debt Repayment Schemes Account are to be credited to the Consolidated Fund, and that Fund is liable to make good any loss arising out of the sale of those securities.

Official Assignee to furnish list of creditors

30. The Official Assignee must, whenever required by any creditor of a bankrupt to do so, and on payment by the creditor of the prescribed fee, furnish and transmit to the creditor a list of the creditors of the bankrupt, showing in the list the amount of the debt due from the bankrupt to each of the creditors.

Control of Court over Official Assignee

31.—(1) The Court is to take cognizance of the conduct of the Official Assignee in the Official Assignee's administration of the estate of a bankrupt.

(2) If the Official Assignee does not faithfully perform the Official Assignee's duties or duly observe all the requirements imposed on the Official Assignee by this Act or any other written law with respect to the performance of the Official Assignee's duties, or if any complaint is made to the Court by any creditor in relation to the Official Assignee's conduct in the Official Assignee's administration of the estate of the bankrupt, the Court is to inquire into the matter and take such action on the matter as the Court considers expedient.

(3) The Court may —

(*a*) at any time require the Official Assignee to answer any inquiry made by the Court in relation to the Official Assignee's administration of the estate of a bankrupt; and

(*b*) direct an investigation to be made of the books and vouchers of the Official Assignee, or examine the Official Assignee on oath concerning the Official Assignee's administration of the estate of a bankrupt.

Control of Official Receiver by Minister

32. The Minister is to take cognizance of the conduct of the Official Receiver in the liquidation of companies, and if —

(*a*) the Official Receiver does not faithfully perform the Official Receiver's duties or duly observe all the requirements imposed on the Official Receiver by any written law or otherwise with respect to the performance of the Official Receiver's duties; or

(*b*) any complaint is made to the Minister by any creditor or contributory in relation to the conduct of the Official Receiver in the liquidation of any company,

the Minister is to inquire into the matter, and take such action on the matter as the Minister thinks expedient, and may direct an

investigation to be made of the books and vouchers of the Official Receiver.

Review by Court of Official Assignee's act, omission or decision

33.—(1) A bankrupt, any creditor of the bankrupt or any other person who is dissatisfied with any act, omission or decision of the Official Assignee, in relation to the Official Assignee's administration of the bankrupt's estate, may apply to the Court to review that act, omission or decision.

(2) The Official Assignee may apply to the Court —

(*a*) for directions in relation to any particular matter arising under the bankruptcy; or

(*b*) to reverse or modify any previous act or decision of the Official Assignee.

(3) On hearing an application under subsection (1) or (2), the Court may —

(*a*) confirm, reverse or modify any act or decision of the Official Assignee; or

(*b*) give such directions to the Official Assignee, or make such other order, as the Court thinks fit.

(4) This section applies despite the discharge of the bankrupt or the annulment of the bankruptcy order.

Liability of Official Assignee, etc.

34.—(1) All sums required to discharge any liability that the Official Assignee may be personally liable to discharge are to be charged on the Consolidated Fund.

(2) Neither the Official Assignee nor any officer of the Official Assignee is to be personally liable for any act that the Official Assignee or officer (as the case may be) did not contribute to in any way or could not by the exercise of reasonable diligence have averted.

(3) No liability is to lie personally against the Official Assignee, or any officer of the Official Assignee acting under the direction of the

Official Assignee, who, acting in good faith and with reasonable care, does or omits to do anything in the course of or in connection with —

(*a*) the exercise or purported exercise of any power; or

(*b*) the performance or purported performance of any function or duty,

under section 20, 25, 334, 358, 370, 379, 382, 393, 395, 403, 433 or 436(3).

(4) Any liability that but for subsection (3) would lie against the Official Assignee, or any officer of the Official Assignee, is to lie instead against the Government.

Liability of Official Receiver, etc.

35.—(1) All sums required to discharge any liability that the Official Receiver may be personally liable to discharge are to be charged on the Consolidated Fund.

(2) Neither the Official Receiver nor any officer of the Official Receiver is to be personally liable for any act that the Official Receiver or officer (as the case may be) did not contribute to in any way or could not by the exercise of reasonable diligence have averted.

(3) No liability is to lie personally against the Official Receiver, or any officer of the Official Receiver acting under the direction of the Official Receiver, who, acting in good faith and with reasonable care, does or omits to do anything in the course of or in connection with —

(*a*) the exercise or purported exercise of any power; or

(*b*) the performance or purported performance of any function or duty,

under section 71, 134(*b*), 137, 188, 189, 192, 197, 199, 212, 213, 214 or 241, or under section 149, 210, 215, 215K or 390 of the Companies Act.

(4) Any liability that but for subsection (3) would lie against the Official Receiver, or any officer of the Official Receiver, is to lie instead against the Government.

Division 2 — Trustee in bankruptcy

Appointment of person other than Official Assignee as trustee in bankruptcy

36.—(1) The Court may, in the following circumstances, appoint a person other than the Official Assignee to be the trustee of a bankrupt's estate:

(*a*) when making a bankruptcy order, and on the application of the creditor who applied for the bankruptcy order;

(*b*) at any time after the making of a bankruptcy order that has not been discharged or annulled, and on the application of any creditor, the Official Assignee or any existing trustee of the bankrupt's estate.

(2) A creditor applying for a bankruptcy order must apply to the Court for the appointment of a person other than the Official Assignee to be the trustee of the bankrupt's estate, if —

(*a*) the creditor is —

(i) an institutional creditor;

(ii) a subsidiary of an institutional creditor; or

(iii) a corporation in respect of which 2 or more institutional creditors together control more than half of the voting power; or

(*b*) the debt when incurred was payable to a person who is —

(i) an institutional creditor;

(ii) a subsidiary of an institutional creditor; or

(iii) a corporation in respect of which 2 or more institutional creditors together control more than half of the voting power.

(3) The official name of the trustee is —

(*a*) "the Trustee of the Estate of (name of bankrupt), a Bankrupt"; or

(*b*) "the Trustee in Bankruptcy of (name of bankrupt), a Bankrupt".

(4) In this section —

"annual sales turnover", for a relevant period and in relation to an undertaking, means —

(*a*) if the relevant period is a business year that consists of 12 months, the sales turnover of that undertaking in that business year; or

(*b*) if the relevant period is a business year that does not consist of 12 months or is a business commencement period, the amount calculated using the formula $(S \div B) \times 12$, where —

(i) S is the sales turnover of that undertaking in that business year or business commencement period; and

(ii) B is the number of months in that business year or business commencement period;

"business commencement period", in relation to an undertaking, means the period between the date of commencement of the business operations of the undertaking and the date of the application for the bankruptcy order mentioned in subsection (2) (both dates inclusive);

"business year" means a period in respect of which an undertaking prepares or is required to prepare accounts;

"employee" means an individual who has entered into or works under a contract of service with an employer;

"institutional creditor" means a creditor that is —

(*a*) a banking corporation;

(*b*) a finance company licensed under the Finance Companies Act (Cap. 108);

(*c*) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act (Cap. 289); or

(*d*) an undertaking that —

(i) in the relevant period, has an annual sales turnover of more than $100 million; and

(ii) at the date of the application for the bankruptcy order mentioned in subsection (2), has more than 200 employees;

"relevant period", in relation to an undertaking, means —

(*a*) the business year of the undertaking immediately preceding the date of the application for the bankruptcy order mentioned in subsection (2); or

(*b*) if there is no such business year, the business commencement period of the undertaking;

"sales turnover", in relation to an undertaking, means the aggregate of the following amounts, after deducting sales rebates, goods and services tax and other taxes directly related to those amounts:

(*a*) the amounts derived by that undertaking from the sale of products and the provision of services falling within the ordinary activities of that undertaking;

(*b*) any other amounts derived from the business operations of that undertaking, but excluding gains from the sale of fixed assets, donations, grants, subsidies, subscriptions, interest, dividends, goods purchased for resale and investment income;

"undertaking" means any individual, or any body corporate, unincorporated body of persons or other entity, that is capable of carrying on commercial or economic activities relating to goods or services, but excludes a body corporate or unincorporate established by or under any public Act to perform or discharge a public function.

Qualifications for appointment as trustee in bankruptcy

37. A person must not be appointed as a trustee in bankruptcy unless the person satisfies the Court that —

(*a*) the person is a licensed insolvency practitioner; and

(*b*) the person has consented in writing to being appointed as a trustee in bankruptcy.

Person appointed as trustee in bankruptcy to furnish security before acting

38.—(1) A person appointed as a trustee in bankruptcy —

(*a*) must not commence acting as such trustee until the person has given security in accordance with subsection (2); and

(*b*) where the trustee's security has been forfeited under section 42(8), must not continue acting as such trustee until the person has given fresh security in accordance with subsection (2).

(2) The trustee in bankruptcy must give security in such manner as the Official Assignee may specify, and to the satisfaction of the Official Assignee that the trustee will faithfully perform the trustee's duties and duly observe all the requirements imposed on the trustee by this Act or any other written law with respect to the performance of the trustee's duties.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000.

General functions, duties and powers of trustee in bankruptcy

39.—(1) Subject to subsection (3) and section 42, a trustee in bankruptcy —

(*a*) has all the functions and duties of the Official Assignee in relation to the conduct of the bankrupt in question and the administration of the bankrupt's estate as provided in this Act; and

(*b*) may exercise all or any of the powers of the Official Assignee in relation to the bankrupt and the bankrupt's estate.

(2) Unless the context otherwise requires, any reference in this Act to the Official Assignee includes a reference to a trustee in bankruptcy.

(3) Sections 20, 25, 34(3) and (4), 334, 358, 379, 382, 384, 393, 395, 403 and 436 do not apply to a trustee in bankruptcy, and section 378(*a*), (*c*), (*f*), (*h*) and (*i*) does not apply to a trustee in bankruptcy except with the consent of the Court, the creditors' committee or, if there is no creditors' committee, the Official Assignee.

Trustee in bankruptcy to pay moneys received into prescribed bank account

40.—(1) Every trustee in bankruptcy must, in the manner and at the times prescribed by regulations, pay all moneys received as trustee into such bank account as is prescribed by those regulations or as may be specified by the Court.

(2) Any trustee in bankruptcy who pays any moneys received as trustee into any bank account other than the bank account prescribed or specified under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

Remuneration of trustee in bankruptcy

41.—(1) A trustee in bankruptcy is entitled to receive such salary or remuneration as is determined in the following manner:

(*a*) by agreement between the trustee in bankruptcy and the creditors' committee, if any;

(*b*) where there is no agreement with the creditors' committee or where there is no such committee, by a special resolution of the creditors whose debts have been admitted for the purpose of voting and who are present (in person or by proxy) and voting at a meeting to be convened by the trustee by a notice to each creditor in accordance with subsection (2);

(*c*) where there is no determination in the manner mentioned in paragraph (*a*) or (*b*), by the Court.

(2) The trustee in bankruptcy must attach to every notice under subsection (1)(*b*) a statement of all receipts and expenditure by the trustee and the amount of remuneration sought by the trustee.

(3) In this section, "special resolution" has the meaning given by section 273(1).

Control of trustee in bankruptcy by Official Assignee

42.—(1) The Official Assignee is to take cognizance of the conduct of a trustee in bankruptcy in the administration of the estate of a bankrupt.

(2) If the trustee in bankruptcy does not faithfully perform the trustee's duties or duly observe all the requirements imposed on the trustee by this Act or any other written law with respect to the performance of the trustee's duties, or if any complaint is made to the Official Assignee by any creditor or bankrupt in relation to the trustee's conduct in the administration of the estate, the Official Assignee must inquire into the matter and take such action on the matter as the Official Assignee thinks expedient.

(3) The Official Assignee may —

(*a*) at any time require the trustee in bankruptcy to answer any inquiry in relation to the trustee's administration of the estate of a bankrupt; and

(*b*) direct an investigation to be made of the books and vouchers of the trustee.

(4) It is the duty of the trustee in bankruptcy —

(*a*) to furnish the Official Assignee with such information;

(*b*) to produce to the Official Assignee, and permit inspection by the Official Assignee of, such books, papers and other records; and

(*c*) to give the Official Assignee such other assistance,

as the Official Assignee may reasonably require for the purpose of enabling the Official Assignee to carry out the Official Assignee's functions in relation to the bankruptcy.

(5) The Official Assignee may, having regard to the results of any inquiry or investigation made under this section, apply to the Court for the removal of the trustee in bankruptcy.

(6) The Official Assignee may forfeit the security furnished by the trustee in bankruptcy under section 38 if —

(*a*) the trustee fails to comply with section 332(9) or 339(1) as it applies to the trustee;

(*b*) the trustee fails to submit the report of the administration of the bankruptcy in accordance with section 344; or

(*c*) the trustee fails to perform any other duty, or to duly observe any other requirement imposed on the trustee by this Act (other than as mentioned in paragraph (*a*) or (*b*)) or any other written law with respect to the performance of the trustee's duties.

(7) The Official Assignee must not forfeit any security until the Official Assignee has given the trustee in bankruptcy concerned an opportunity to show cause why the security furnished by the trustee under section 38 should not be forfeited.

(8) If, after giving the trustee an opportunity to show cause, the Official Assignee is satisfied that the trustee in bankruptcy had no reasonable excuse for the failure mentioned in subsection (6)(*a*) or (*b*), the Official Assignee must forfeit all or part of the security furnished by the trustee under section 38.

(9) In determining whether to forfeit any, all or part of the security furnished by the trustee in bankruptcy under section 38, the Official Assignee is to have regard to the circumstances surrounding the trustee's failure mentioned in subsection (6)(*a*) or (*b*) (including whether the trustee had a reasonable excuse for the failure), and to any mitigating circumstances.

Review by Court of trustee in bankruptcy's act, omission or decision

43.—(1) The Official Assignee, a bankrupt, any creditor of the bankrupt, or any other person, who is dissatisfied with any act, omission or decision of a trustee in bankruptcy in relation to the

trustee's administration of the bankrupt's estate, may apply to the Court to review such act, omission or decision, and on hearing such an application the Court may —

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

(*b*) give such directions to the trustee or make such other order as the Court thinks fit.

(2) A trustee in bankruptcy may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

Removal of trustee in bankruptcy

44.—(1) A trustee in bankruptcy may be removed from office only by an order of the Court or by a general meeting of the bankrupt's creditors summoned especially for that purpose in accordance with the regulations.

(2) A trustee in bankruptcy vacates that office if the trustee in bankruptcy ceases to be a licensed insolvency practitioner.

(3) Subject to subsection (4), a trustee in bankruptcy may resign from that office —

(*a*) by giving 2 months' notice of the trustee's resignation to the Court and the Official Assignee; and

(*b*) by filing an application to the Court for the appointment of the Official Assignee or another person to act as trustee of the bankrupt's estate.

(4) A trustee in bankruptcy cannot resign from that office unless the trustee —

(*a*) has submitted to the Official Assignee a report on the work done in relation to the bankrupt's estate, containing such particulars as may be prescribed;

(*b*) has nominated to act as trustee of the bankrupt's estate —

(i) another person who consents to act as trustee; or

(ii) the Official Assignee, if the Official Assignee consents in writing to the appointment; and

(*c*) has given the bankrupt's creditors notice of the trustee's intention to resign and of the identity of the person nominated under paragraph (*b*).

(5) A trustee in bankruptcy vacates that office if the bankruptcy order is annulled.

(6) A trustee in bankruptcy must, not later than 2 months after vacating that office under subsection (2) or such further period as the Official Assignee may allow, submit to the Official Assignee a report on the work done in relation to the bankrupt's estate, containing such particulars as may be prescribed.

(7) A trustee in bankruptcy who, without reasonable excuse, fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000.

Vacancy in office of trustee in bankruptcy

45. Where the appointment of any person as trustee in bankruptcy fails to take effect, or where a vacancy arises in the office of a trustee in bankruptcy whose appointment has taken effect, the Official Assignee —

(*a*) is to act as the trustee of the bankrupt's estate until the vacancy is filled; and

(*b*) may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy.

Liability of trustee in bankruptcy

46.—(1) Where —

(*a*) a trustee in bankruptcy has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate; or

(*b*) the estate of a bankrupt has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee in bankruptcy in the carrying out of the trustee's functions,

the Official Assignee, the bankrupt or any creditor of the bankrupt may apply to the Court for any order specified in subsection (2).

(2) Upon hearing an application made under subsection (1), the Court may, for the benefit of the estate, order the trustee in bankruptcy to —

(*a*) repay, restore or account for any money or other property (together with interest at such rate as the Court may think just); or

(*b*) pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court may think just.

(3) Any order made by the Court under subsection (2) is without prejudice to any liability on the part of the trustee in bankruptcy arising apart from this section.

(4) Where a trustee in bankruptcy seizes or disposes of any property that is not comprised in the bankrupt's estate, and at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that the trustee is entitled (whether pursuant to an order of the Court or otherwise) to seize or dispose of that property, the trustee —

(*a*) is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal, except insofar as the loss or damage is caused by the negligence of the trustee; and

(*b*) has a lien on the property or the proceeds of its sale for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

Division 3 — Regulation of insolvency practitioners

Acting as insolvency practitioner

47.—(1) For the purposes of this Division, a person —

(*a*) acts as an insolvency practitioner in relation to a corporation, if the person acts as —

(i) the liquidator or provisional liquidator of the corporation;

(ii) the judicial manager or interim judicial manager of the corporation; or

(iii) a receiver or manager of the property of the corporation (being a company), or a receiver or manager of the property in Singapore of the corporation (not being a company); and

(*b*) acts as an insolvency practitioner in relation to an individual, if the person acts as —

(i) the trustee of a bankrupt's estate; or

(ii) where a voluntary arrangement is proposed or approved under Part 14, the nominee under such voluntary arrangement.

(2) Subsection (1) does not apply to anything done by —

(*a*) the Official Receiver or Official Assignee;

(*b*) a liquidator appointed in a members' voluntary winding up under Division 3 of Part 8; or

(*c*) a scheme manager appointed in relation to a scheme of arrangement under Part 5 of this Act or Part VII of the Companies Act.

(3) A person who is appointed as a liquidator in a members' voluntary winding up under Division 3 of Part 8, or as a scheme manager in relation to a scheme of arrangement under Part 5 of this Act or Part VII of the Companies Act, must give to the Official Receiver written notice in the prescribed form of the person's appointment.

(4) In this section, "scheme manager" and "scheme of arrangement" have the meanings given by section 61(1).

Person not to act as insolvency practitioner without licence

48.—(1) Except under and in accordance with an insolvency practitioner's licence granted or renewed under section 51, a person must not —

(*a*) act as an insolvency practitioner in relation to a corporation or an individual; or

(*b*) advertise, or in any way hold out, that the person is willing to act as an insolvency practitioner in relation to a corporation or an individual.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) No fee, commission or reward is recoverable in any action, suit or matter by any person for anything done by a person that gives rise to an offence under this section.

Licensing officer and assistant licensing officers

49.—(1) The Minister may appoint one or more public officers by name or office to be the licensing officer or licensing officers responsible for the administration of this Division.

(2) A licensing officer may appoint such number of public officers as assistant licensing officers as is necessary to assist the licensing officer in carrying out the licensing officer's functions and duties under this Division.

(3) The functions and duties conferred on a licensing officer by this Division may be performed by any assistant licensing officer, and such performance is subject to the direction and control of the licensing officer.

(4) The Minister may from time to time give to any licensing officer such directions, not inconsistent with the provisions of this Division, as the Minister considers necessary for carrying out the provisions of this Division, and the licensing officer must comply with every direction so given.

Eligibility of individual to hold insolvency practitioner's licence

50.—(1) An individual is not eligible to be granted, or to hold or continue to hold, an insolvency practitioner's licence unless the individual is a qualified person.

(2) In this section, "qualified person" means any person who —

(*a*) is a solicitor;

(*b*) is a public accountant;

(*c*) is a chartered accountant within the meaning given by section 2(1) of the Singapore Accountancy Commission Act (Cap. 294B); or

(*d*) possesses such other qualifications as the Minister may prescribe by order in the *Gazette*.

Grant and renewal of licence

51.—(1) An application for the grant or renewal of a licence must be —

(*a*) made to the licensing officer in such form and manner as may be prescribed;

(*b*) accompanied by the prescribed fee (if any); and

(*c*) in the case of an application for the renewal of a licence, made before the start of the renewal period.

(2) An applicant for the grant or renewal of a licence must, at the request of the licensing officer, provide such further information or evidence that the licensing officer may require to decide the application.

(3) Upon receipt of an application under subsection (1), the licensing officer may —

(*a*) grant or renew the licence applied for; or

(*b*) refuse the application.

(4) Subject to the provisions of this Division, a person who makes an application under subsection (1) is eligible for the grant or renewal of the licence if, and only if —

(*a*) the person has paid the prescribed fee (if any); and

(*b*) the person satisfies such other requirements as may be prescribed for the grant or renewal of the licence.

(5) Without affecting subsection (4), the licensing officer may refuse to grant a licence to a person, or to renew the licence of a person, if, in the opinion of the licensing officer —

(*a*) the person is not a fit and proper person to hold or continue to hold the licence; or

(*b*) it is not in the public interest to grant or renew the licence, or the grant or renewal of the licence may pose a threat to national security.

(6) Where a person submits an application for the renewal of the person's licence before the start of the renewal period, the licence continues in force until the date on which the licence is renewed or the application for its renewal is refused, as the case may be.

(7) Any person who, in making an application for the grant or renewal of a licence —

(*a*) makes any statement or furnishes any particulars, information or document that the person knows to be false or does not believe to be true; or

(*b*) furnishes any information that the person knows or has reason to believe is misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

(8) In deciding for the purposes of this section whether an individual is a fit and proper person to hold or continue to hold a licence, the licensing officer may take into account any matter the licensing officer considers relevant, including any of the following:

(*a*) whether the individual has been convicted in Singapore or elsewhere of any offence involving fraud, dishonesty or moral turpitude;

(*b*) whether the individual has had a judgment entered against the individual in civil proceedings that involves a finding of fraud, dishonesty or breach of fiduciary duty on the part of the individual;

(*c*) whether the individual is or was suffering from a mental disorder;

(*d*) whether the individual is an undischarged bankrupt or has entered into a composition or scheme of arrangement with the creditors of the individual;

(*e*) whether the individual has had a licence revoked by the licensing officer previously.

(9) In this section, "renewal period", in relation to an application for the renewal of a licence, means such period, immediately before the date of expiry of the licence, as may be prescribed.

Conditions of licence

52.—(1) In granting or renewing a licence, the licensing officer may impose such conditions, not inconsistent with the provisions of this Act and any prescribed condition of the licence, as the licensing officer considers requisite or expedient.

(2) For the purpose of subsection (1), the licensing officer may specify —

(*a*) conditions applicable to all licensees;

(*b*) conditions applicable to a specified class of licensees; or

(*c*) conditions applicable to a specified licensee only.

(3) The licensing officer may at any time add to, vary or revoke any condition of a licence imposed under subsection (1).

(4) Before making any modification to the conditions of a licence, the licensing officer must give notice to the licensee concerned —

(*a*) stating that the licensing officer proposes to make the modification in the manner specified in the notice; and

(*b*) specifying the time (being not less than 14 days after the date of service of the notice) within which the licensee may

make written representations to the licensing officer with respect to the proposed modification.

(5) Upon receipt of any written representation mentioned in subsection (4)(*b*), the licensing officer must consider the representation and may —

(*a*) reject the representation;

(*b*) amend the proposed modification in such manner as the licensing officer thinks fit, having regard to the representation; or

(*c*) withdraw the proposed modification.

(6) Where —

(*a*) the licensing officer rejects any written representation under subsection (5)(*a*);

(*b*) the licensing officer amends any proposed modification to the conditions of the licence under subsection (5)(*b*); or

(*c*) no written representation is received by the licensing officer within the time specified by the licensing officer under subsection (4)(*b*), or any written representation made by the licensee is withdrawn, and the licensee has not given immediate effect to the modification,

the licensing officer must issue a direction in writing to the licensee requiring the licensee to give effect, within the time specified by the licensing officer, to the modification as specified in the notice given under subsection (4), or as amended by the licensing officer under subsection (5)(*b*), as the case may be.

Form and validity of licence

53.—(1) A licence must —

(*a*) be in such form as the licensing officer may determine; and

(*b*) contain the conditions subject to which it is granted.

(2) A licence is to remain in force until 30 June in the third year following the year in which the licence was granted.

(3) A licence that is renewed continues in force for a further period of 3 years, starting on the date immediately following that on which the licence would (but for its renewal) have expired.

Register of licensed insolvency practitioners

54.—(1) Upon the grant or renewal of a licence, the licensing officer must cause to be entered, in a register of licensed insolvency practitioners, the following particulars of the licensee:

(*a*) the licensee's full name;

(*b*) the name of the licensee's employer or, where the licensee is self-employed, the name of the licensee's business;

(*c*) the principal address in which the licensee will be practising.

(2) Any person may inspect the register of licensed insolvency practitioners during office hours without payment.

(3) If there is any change in the particulars mentioned in subsection (1) of any licensee, that licensee must within one week after the change notify the licensing officer of that change, and the licensing officer must then cause the entry in respect of that licensee in the register of licensed insolvency practitioners to be amended to reflect that change.

(4) If the licensing officer revokes, cancels or suspends the licence of any licensee, the licensing officer must cause the entry in respect of that licensee in the register of licensed insolvency practitioners to be amended to reflect the revocation, cancellation or suspension.

Licensed insolvency practitioner not to act under certain circumstances

55. A licensed insolvency practitioner must not act as an insolvency practitioner at any time when the licensee —

(*a*) has been adjudged a bankrupt and has not been discharged from bankruptcy;

(*b*) is subject to a disqualification order made under section 149 of the Companies Act;

(*c*) is subject to a debt repayment scheme under Part 15;

(*d*) is subject to a voluntary arrangement under Part 14; or

(*e*) is subject to any procedure, order, scheme or arrangement under the laws of any foreign country similar to those mentioned in paragraphs (*a*) to (*d*).

Revocation, cancellation or suspension of licence, etc.

56.—(1) Subject to subsection (3), the licensing officer may by order revoke any licence if the licensing officer is satisfied that —

(*a*) the licensee has failed to comply with —

(i) any condition to which the licence is subject; or

(ii) any provision of this Act that is applicable to the licensee, and the contravention of which is not an offence;

(*b*) the licence had been obtained by fraud or misrepresentation;

(*c*) at the time the licence was granted or renewed, the licensing officer was unaware of an existing circumstance that would have required or permitted the licensing officer to refuse to grant or renew the licensee's licence;

(*d*) the licensee is no longer eligible to hold a licence under section 50;

(*e*) the licensee has been adjudged a bankrupt in Singapore or elsewhere;

(*f*) the licensee is subject to a debt repayment scheme under Part 15 or a voluntary arrangement under Part 14 or is subject to a similar scheme or arrangement outside Singapore;

(*g*) the licensee is subject to a disqualification order made under section 149 of the Companies Act or a similar order under the laws of any foreign country;

(*h*) the licensee has been convicted of an offence under this Act;

(*i*) the licensee has been convicted in Singapore or elsewhere of an offence involving fraud, dishonesty or moral turpitude;

(*j*) the licensee is no longer a fit and proper person to continue to hold the licence;

(*k*) it is undesirable in the public interest for the licensee to continue as a licensee; or

(*l*) the licensee has died.

(2) Subject to subsection (3), the licensing officer may, in any case in which the licensing officer considers that no cause of sufficient gravity for revoking any licence exists, by order —

(*a*) suspend the licence for a period not exceeding 6 months;

(*b*) direct the licensee to pay a penalty of not more than $100,000;

(*c*) censure the licensee concerned; or

(*d*) modify any condition of the licence, or impose such other conditions, as the licensing officer considers appropriate.

(3) The licensing officer must give the licensee written notice of —

(*a*) the licensing officer's intention to exercise any power under subsection (1) or (2), and the ground for the exercise of such power; and

(*b*) the date on which the licensing officer intends to exercise the power.

(4) The licensing officer must not, during a period of 30 days after the licensing officer informs the licensee of such intention, exercise any power under subsection (1) or (2), unless the licensee concerned is given an opportunity to be heard, whether in person or by a representative and whether in writing or otherwise.

(5) Where the licensing officer has by order revoked a licence under subsection (1) or made any order under subsection (2) in respect of a licensee, the licensing officer must serve on the licensee concerned a notice of the order.

(6) An order under subsection (1) or (2) revoking or suspending a licence takes effect at the end of 14 days after the service of the notice of the order on the licensee under subsection (5).

(7) In any proceedings under this section consequent upon the conviction of a licensee for a criminal offence, the licensing officer must accept the licensee's conviction as final and conclusive.

(8) In deciding for the purposes of this section whether a licensee is a fit and proper person to continue to hold a licence, the licensing officer may take into account any matter the licensing officer considers relevant, including any matter mentioned in section 51(8).

(9) Subsections (4), (5) and (6) do not apply where the licensing officer revokes a licence on the ground mentioned in subsection (1)(*l*).

(10) If a licensee submits a request in writing to the licensing officer to cancel the licensee's licence and to have the licensee's name removed from the register of licensed insolvency practitioners, the licensing officer may (subject to such conditions or directions which the licensing officer may impose or give) cancel the licence and remove the licensee's name from the register.

Power to require documents or information

57.—(1) For the purposes of investigating whether any licensee has breached or contravened any requirement under this Act or condition of the licence, the licensing officer may, by notice in writing to any licensee, require that licensee to produce any document, or to provide any information, that —

(*a*) is specified or described in the notice, or falls within a category of documents or information that is specified or described in the notice; and

(*b*) the licensing officer considers to be relevant to the investigation.

(2) A notice under subsection (1) must —

(*a*) indicate the subject matter and purpose of the investigation; and

(*b*) provide information on the offences under subsections (5), (9) and (10).

(3) The licensing officer may specify in the notice —

(*a*) the time and place at which any document is to be produced or any information is to be provided; and

(*b*) the manner and form in which that document is to be produced or that information is to be provided.

(4) The power under this section to require a licensee to produce a document includes the power —

(*a*) if the document is produced —

(i) to take copies of or extracts from the document; and

(ii) to require that licensee, or any present or past employee of that licensee, to provide an explanation of the document; or

(*b*) if the document is not produced, to require that licensee to state, to the best of that licensee's knowledge and belief, where the document is.

(5) Any person who fails to comply with a requirement imposed on the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) If a person is charged with an offence under subsection (5) in respect of a requirement to produce a document, it is a defence for the person to prove that —

(*a*) the document was not in the person's possession or under the person's control; and

(*b*) the person had a reasonable excuse for failing to comply with the requirement.

(7) If a person is charged with an offence under subsection (5) in respect of a requirement —

(*a*) to provide information;

(*b*) to provide an explanation of a document; or

(*c*) to state where a document is to be found,

it is a defence for the person to prove that the person had a reasonable excuse for failing to comply with the requirement.

(8) Failure to comply with a requirement imposed under subsection (1) is not an offence if the licensing officer imposing the requirement has failed to act in accordance with subsections (1) and (2).

(9) Any person who, having been required to produce a document under subsection (1) —

(*a*) intentionally or recklessly destroys or otherwise disposes of the document;

(*b*) falsifies or conceals the document; or

(*c*) causes or permits the destruction, disposal, falsification or concealment of the document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

(10) Any person who, pursuant to a notice under subsection (1), provides information or produces any document to the licensing officer knowing the information or document to be false or misleading in a material particular or being reckless as to whether the information or document is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

Power to issue written directions

58.—(1) Where any licensee contravenes, or is likely to contravene, any provision of this Division or any condition of the licence, the licensing officer may, if the licensing officer thinks it necessary or expedient for the purposes of administration of this Division, issue a written direction to the licensee to require the licensee to do either or both of the following:

(*a*) to comply with, or cease the contravention of, that provision or condition;

(*b*) to make good any default arising from the contravention.

(2) The licensing officer may at any time vary, rescind or revoke any written direction issued under subsection (1).

(3) Any licensee who fails to comply with any requirement specified in a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction —

(*a*) to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both; and

(*b*) in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

Appeal to Minister

59.—(1) Any person whose application for a licence, or for the renewal of a licence, has been refused by the licensing officer may, within the appeal period after being notified of such refusal, appeal against the refusal in the prescribed manner to the Minister.

(2) Where a licence is granted or renewed by the licensing officer subject to conditions, or where any condition is added or varied under section 52(3), the licensee concerned may, within the appeal period after being notified of such conditions, addition or variation, appeal against the conditions in the prescribed manner to the Minister.

(3) If the licensing officer has made any order under section 56(1) or (2) in respect of any licensee, the licensee may, within the appeal period after being served with the notice of the order, appeal against the order in the prescribed manner to the Minister.

(4) In any appeal under this section against any decision or order of the licensing officer made consequent upon the conviction of the licensee for a criminal offence, the Minister must accept the licensee's conviction as final and conclusive.

(5) An appeal under this section against any decision or order of the licensing officer (except an order mentioned in section 56(6)) does not

stay the decision or order appealed against or prevent the taking of action to implement the decision or order, and the decision or order appealed against must be complied with until the determination of the appeal.

(6) The Minister's decision on an appeal under this section is final.

(7) In this section, "appeal period" means 30 days or such longer period as the Minister allows in a particular case, whether allowed before or after the end of the 30 days.

Composition of offences

60.—(1) The licensing officer may, in the licensing officer's discretion, compound any offence under this Division which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

(*a*) one half of the amount of the maximum fine that is prescribed for the offence;

(*b*) $5,000.

(2) On payment of such sum of money under subsection (1), no further proceedings are to be taken against that person in respect of the offence.

(3) All sums collected under this section must be paid into the Consolidated Fund.

PART 4

CORPORATE INSOLVENCY, RESTRUCTURING AND DISSOLUTION — PRELIMINARY

Interpretation of Parts 4 to 12

61.—(1) In Parts 4 to 12, unless the context otherwise requires —

"accounts" has the meaning given by section 4(1) of the Companies Act;

"books" has the meaning given by section 4(1) of the Companies Act;

"business day" means any day other than a Saturday, Sunday or public holiday;

"certified" —

(*a*) in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document; and

(*b*) in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

"charge" has the meaning given by section 4(1) of the Companies Act;

"chief executive officer" has the meaning given by section 4(1) of the Companies Act;

"company limited by guarantee" has the meaning given by section 4(1) of the Companies Act;

"company limited by shares" has the meaning given by section 4(1) of the Companies Act;

"constitution", in relation to a company, has the meaning given by section 4(1) of the Companies Act;

"creditors' voluntary winding up" means a winding up under Division 3 of Part 8, other than a members' voluntary winding up;

"debenture" has the meaning given by section 4(1) of the Companies Act;

"default penalty" means a default penalty within the meaning given by section 267;

"director" has the meaning given by section 4(1) of the Companies Act;

"document" includes any summons, order or other legal process, any notice and any register;

"holding company" has the meaning given by section 5 of the Companies Act;

"limited company" has the meaning given by section 4(1) of the Companies Act;

"members' voluntary winding up" means a winding up under Division 3 of Part 8, for which a declaration has been made and lodged under section 163;

"netting arrangement" means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt);

"officer", in relation to a corporation, includes —

(*a*) a director or secretary of the corporation, or a person employed in an executive capacity by the corporation;

(*b*) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(*c*) a liquidator of a company appointed in a voluntary winding up,

but does not include —

(*d*) a receiver who is not also a manager;

(*e*) a receiver and manager appointed by the Court;

(*f*) a liquidator appointed by the Court or by the creditors; or

(*g*) a judicial manager appointed under Part 7;

"preferential debt" means any debt that is to be paid in priority to all other unsecured debts, and is specified in section 203;

"registered", in relation to a corporation, means registered under the Companies Act or any corresponding previous enactment;

"resolution for voluntary winding up" means the resolution mentioned in section 160;

"scheme manager", in relation to any scheme of arrangement between a company and the company's creditors or any class of those creditors, under Part VII of the Companies Act or Part 5 of this Act, means any person appointed by the Court or the company under the scheme of arrangement to administer and manage the scheme of arrangement;

"scheme of arrangement" means any compromise or arrangement, between a company and the company's creditors or any class of those creditors, approved under Part VII of the Companies Act or Part 5 of this Act;

"security" means any mortgage, charge, pledge, lien or other security recognised by law;

"set-off arrangement" means an arrangement under which 2 or more debts, claims or obligations can be set off against each other;

"share" has the meaning given by section 4(1) of the Companies Act;

"special notice" has the meaning given by section 185 of the Companies Act;

"special resolution" means a special resolution mentioned in section 184 of the Companies Act;

"statutory meeting" has the meaning given by section 4(1) of the Companies Act;

"statutory report" has the meaning given by section 4(1) of the Companies Act;

"treasury share" has the meaning given by section 4(1) of the Companies Act;

"ultimate holding company" has the meaning given by section 5A of the Companies Act;

"unit" has the meaning given by section 4(1) of the Companies Act;

"unlimited company" has the meaning given by section 4(1) of the Companies Act.

(2) A reference in Parts 4 to 12 to the directors of a company is, in the case of a company that has only one director, to be construed as a reference to that director.

(3) A reference in Parts 4 to 12 to the doing of any act by 2 or more directors of a company is, in the case of a company that has only one director, to be construed as the doing of that act by that director.

Matters constituting affairs of company

62. A reference in section 125(1)(*f*) or 157 to the affairs of a company is, unless the contrary intention appears, to be construed as a reference to —

(*a*) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the company;

(*b*) in the case of a company (not being a trustee company) that is a trustee (but without limiting paragraph (*a*)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(*c*) the internal management and proceeding of the company;

(*d*) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the company, or to or in relation to the company or its business or property, at a time when —

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the company;

(ii) the company is under judicial management;

(iii) a compromise or an arrangement made between the company and another person or other persons is being administered; or

(iv) the company is being wound up,

and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, or such a judicial manager, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the company;

(*e*) the ownership of shares in, debentures of, and interests issued by, the company;

(*f*) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the company or to dispose of, or to exercise control over the disposal of, such shares;

(*g*) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the company, or are or have been able to control or materially to influence the policy of the company;

(*h*) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the company;

(*i*) where the company has issued interests, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and

(*j*) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters mentioned in any of the preceding paragraphs.

PART 5

SCHEME OF ARRANGEMENT

Application of this Part

63.—(1) This Part only applies in a case that involves a compromise or an arrangement between a company and its creditors or any class of those creditors.

(2) Except as provided in sections 69, 70 and 71, this Part does not derogate from sections 210 and 211 of the Companies Act.

(3) In this Part, "company" means any corporation liable to be wound up under this Act, but excludes such company or class of companies as the Minister may by order in the *Gazette* prescribe.

Power of Court to restrain proceedings, etc., against company

64.—(1) Where a company proposes, or intends to propose, a compromise or an arrangement between the company and its creditors or any class of those creditors, the Court may, on the application of the company, make one or more of the following orders, each of which is in force for such period as the Court thinks fit:

(*a*) an order restraining the passing of a resolution for the winding up of the company;

(*b*) an order restraining the appointment of a receiver or manager over any property or undertaking of the company;

(*c*) an order restraining the commencement or continuation of any proceedings (other than proceedings under section 210 or 212 of the Companies Act, or this section or section 66, 69 or 70) against the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) an order restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) an order restraining the taking of any step to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing

agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;

(*f*) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act (Cap. 61)), except with the leave of the Court and subject to such terms as the Court imposes.

(2) The company may make the application under subsection (1) only if all of the following conditions are satisfied:

(*a*) no order has been made and no resolution has been passed for the winding up of the company;

(*b*) the company makes, or undertakes to the Court to make as soon as practicable —

(i) an application under section 210(1) of the Companies Act for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement mentioned in subsection (1); or

(ii) an application under section 71(1) to approve the compromise or arrangement mentioned in subsection (1);

(*c*) the company does not make an application under section 210(10) of the Companies Act.

(3) When the company makes the application under subsection (1) to the Court —

(*a*) the company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar of Companies; and

(*b*) unless the Court orders otherwise, the company must send a notice of the application to each creditor meant to be bound

by the intended or proposed compromise or arrangement and who is known to the company.

(4) The company must file the following with the Court together with the application under subsection (1):

(*a*) evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement;

(*b*) in a case where the company has not proposed the compromise or arrangement to the creditors or class of creditors yet, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when a statement mentioned in section 211(1)(*a*) of the Companies Act or section 71(3)(*a*) relating to the intended compromise or arrangement is placed before those creditors;

(*c*) a list of every secured creditor of the company;

(*d*) a list of all unsecured creditors who are not related to the company or, if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such unsecured creditors.

(5) An order of the Court under subsection (1) —

(*a*) may be made subject to such terms as the Court imposes; and

(*b*) may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere.

(6) When making an order under subsection (1), the Court must order the company to submit to the Court, within such time as the Court may specify, sufficient information relating to the company's

financial affairs to enable the company's creditors to assess the feasibility of the intended or proposed compromise or arrangement, including such of the following information as the Court may specify:

(*a*) a report on the valuation of each of the company's significant assets;

(*b*) if the company acquires or disposes of any property or grants security over any property — information relating to the acquisition, disposal or grant of security, such information to be submitted not later than 14 days after the date of the acquisition, disposal or grant of security;

(*c*) periodic financial reports of the company and the company's subsidiaries;

(*d*) forecasts of the profitability, and the cash flow from the operations, of the company and the company's subsidiaries.

(7) The Court may make an order extending the period for which an order under subsection (1) is in force, if an application for the extension of the period is made by the company before the expiry of that period.

(8) Subject to subsection (9), during the automatic moratorium period for an application under subsection (1) by a company —

(*a*) no order may be made, and no resolution may be passed, for the winding up of the company;

(*b*) no receiver or manager may be appointed over any property or undertaking of the company;

(*c*) no proceedings (other than proceedings under section 210 or 212 of the Companies Act, or this section or section 66, 69 or 70) may be commenced or continued against the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) no execution, distress or other legal process may be commenced, continued or levied against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes; and

(*f*) despite sections 18 and 18A of the Conveyancing and Law of Property Act, no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the leave of the Court and subject to such terms as the Court imposes.

(9) Subsection (8) does not apply to a company that makes an application under subsection (1) if, within the period of 12 months immediately before the date on which that application is made, the company made an earlier application under subsection (1) to which subsection (8) applied.

(10) The company, any creditor of the company, or any receiver and manager of the whole (or substantially the whole) of the property or undertaking of the company, may apply to the Court for —

(*a*) an order discharging or varying any order made under subsection (1); or

(*b*) an order that subsection (8), or any paragraph of that subsection that is specified in the order, does not apply to the company starting on the date of the order.

(11) The Court must grant an application under subsection (10) by a creditor of a company, or by a receiver and manager of the whole (or substantially the whole) of the property or undertaking of a company, if the company failed to comply with subsection (4) when making the application under subsection (1) for the order under subsection (1), and the Court may impose such terms when granting the application under subsection (10) as the Court thinks fit.

(12) Neither an order made by the Court under subsection (1) nor subsection (8) affects —

(*a*) the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations; or

(*b*) the commencement or continuation of any proceedings that may be prescribed by regulations.

(13) The company must, within 14 days after the date of an order made under subsection (1), (7) or (10), lodge a copy of the order with the Registrar of Companies.

(14) In this section —

"automatic moratorium period", in relation to an application under subsection (1), means the period starting on the date on which the application is made, and ending on the earlier of the following:

(*a*) a date that is 30 days after the date on which the application is made;

(*b*) the date on which the application is decided by the Court;

"chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" have the meanings given by section 88(1).

Power of Court to restrain proceedings, etc., against subsidiary or holding company

65.—(1) Where the Court has made an order under section 64(1) in relation to a company (called in this section the subject company), the Court may, on the application of a company that is a subsidiary, a holding company or an ultimate holding company of the subject company (called in this section the related company), make one or more of the following orders, each of which is in force for such period (but not exceeding the period for which the order under section 64(1) is in force) as the Court thinks fit:

(*a*) an order restraining the passing of a resolution for the winding up of the related company;

(*b*) an order restraining the appointment of a receiver or manager over any property or undertaking of the related company;

(*c*) an order restraining the commencement or continuation of any proceedings (other than proceedings under section 210 or 212 of the Companies Act or this section or section 66, 69 or 70) against the related company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) an order restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the related company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) an order restraining the taking of any step to enforce any security over any property of the related company, or to repossess any goods held by the related company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;

(*f*) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the related company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act), except with the leave of the Court and subject to such terms as the Court imposes.

(2) The related company may make the application under subsection (1) only if all of the following conditions are satisfied:

(*a*) no order has been made and no resolution has been passed for the winding up of the related company;

(*b*) the order under section 64(1) made in relation to the subject company is in force;

(*c*) the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under section 64(1);

(*d*) the compromise or arrangement mentioned in paragraph (*c*) will be frustrated if one or more of the actions that may be

restrained by an order under subsection (1) are taken against the related company;

(*e*) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection (1).

(3) When the related company makes the application under subsection (1) to the Court —

(*a*) the related company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar of Companies; and

(*b*) unless the Court orders otherwise, the related company must send a notice of the application to each creditor of the related company who will be affected by an order under subsection (1) and who is known to the related company.

(4) An order of the Court under subsection (1) —

(*a*) may be made subject to such terms as the Court imposes; and

(*b*) may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere.

(5) The Court may make an order extending the period for which an order under subsection (1) is in force, if an application for the extension of the period is made by the related company before the expiry of that period.

(6) The related company, any creditor of the related company, or any receiver and manager of the whole (or substantially the whole) of the property or undertaking of the related company, may apply to the Court for an order discharging or varying any order made under subsection (1).

(7) An order made by the Court under subsection (1) does not affect —

(*a*) the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations; or

(*b*) the commencement or continuation of any proceedings that may be prescribed by regulations.

(8) The related company must, within 14 days after the date of an order made under subsection (1), (5) or (6), lodge a copy of the order with the Registrar of Companies.

(9) In this section, "chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" have the meanings given by section 88(1).

Restraint of disposition of property, etc., during moratorium period

66.—(1) The Court may, on an application made by any creditor of a relevant company at any time during a moratorium period, make either or both of the following orders, each of which is in force for such part of the moratorium period as the Court thinks fit:

(*a*) an order restraining the relevant company from disposing of the property of the relevant company other than in good faith and in the ordinary course of the business of the relevant company;

(*b*) an order restraining the relevant company from transferring any share in, or altering the rights of any member of, the relevant company.

(2) In this section —

"moratorium period", in relation to a relevant company, means any of the following periods that is applicable to the company:

(*a*) the automatic moratorium period mentioned in section 64(8);

(*b*) the period during which an order under section 64(1) is in force, including any extension of that period under section 64(7);

(*c*) the period during which an order under section 65(1) is in force, including any extension of that period under section 65(5);

"relevant company" means a company that has made an application under section 64(1), or in relation to which an order under section 65(1) is made.

Super priority for rescue financing

67.—(1) Where a company has made an application under section 210(1) of the Companies Act or section 64(1), the Court may, on an application by the company under this subsection, make one or more of the following orders:

(*a*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up mentioned in section 203(1)(*b*);

(*b*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;

(*c*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by —

(i) a security interest on property of the company that is not otherwise subject to any security interest; or

(ii) a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising

from the rescue financing is secured in the manner mentioned in this paragraph;

(*d*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if —

(i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and

(ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A company that makes an application under subsection (1) must, unless the Court orders otherwise, send a notice of the application to each creditor of the company.

(3) Where a company that has 2 or more super priority debts is wound up, the super priority debts —

(*a*) rank equally in priority between themselves; and

(*b*) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(4) Where a company that has any super priority debt or debts is wound up, the super priority debt or debts constitute one class of debts and, despite section 203 —

(*a*) the super priority debt or debts are to be paid in priority to all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts; and

(*b*) if the property of the company available for the payment of the super priority debt or debts is insufficient to meet the super priority debt or debts, the super priority debt or debts —

(i) have priority over the claims of the holders of any debentures of the company secured by a floating charge (which, as created, was a floating charge); and

(ii) are to be paid out of any property comprised in or subject to that floating charge.

(5) The reversal or modification on appeal of an order under subsection (1)(*c*) or (*d*) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing (from which arose the debt intended to be secured by that security interest) was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(6) For the purposes of subsection (1)(*d*)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if —

(*a*) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*);

(*b*) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*); or

(*c*) the Court grants any relief (other than compensation) that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(7) Sections 205, 224, 225 and 228 do not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(8) The company must, within 14 days after the date of an order made under subsection (1), lodge a copy of the order with the Registrar of Companies.

(9) In this section —

"rescue financing" means any financing that satisfies either or both of the following conditions:

(*a*) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;

(*b*) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

"security interest" means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

"super priority debt" means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1)(*b*), over all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts, if the company is wound up.

Filing, inspection and adjudication of proofs of debt

68.—(1) Where the Court orders under section 210(1) of the Companies Act a meeting of the creditors, or a class of creditors, of a company to be summoned, the company must state in every notice mentioned in section 211(1) of that Act summoning the meeting (called in this section the notice summoning the meeting) —

(*a*) the manner in which a creditor is to file a proof of debt with the company; and

(*b*) the period within which the proof is to be filed.

(2) Subject to subsection (3), if a creditor does not file the creditor's proof of debt in the manner and within the period stated in the notice

summoning the meeting, the creditor is not allowed to vote (whether in person or by proxy) at the meeting.

(3) The Court may, on an application made by the company or a creditor, make an order extending the period stated in the notice summoning the meeting within which a proof of debt is to be filed.

(4) Upon the making of an order under subsection (3), the company must as soon as practicable send a notice of the order to each creditor meant to be bound by the compromise or arrangement.

(5) Every proof of debt filed under this section is to be adjudicated by the person who is appointed by the Court to serve as the chairperson of the meeting summoned pursuant to the order made under section 210(1) of the Companies Act (called in this section the chairperson).

(6) A creditor who has filed a proof of debt under this section is entitled to inspect the whole or any part of a proof of debt filed by any other creditor, except a part of the other creditor's proof that contains information that is subject to any obligation as to secrecy, or to any other restriction upon the disclosure of information, imposed by any written law, rule of law, contract or rule of professional conduct, or by any person or authority under any written law.

(7) The chairperson must inform each creditor who has filed a proof of debt, within such time and manner as may be prescribed, of the results of the adjudication of the proofs of debt filed by all creditors.

(8) A creditor (*A*) who has filed a proof of debt may object to one or more of the following:

(*a*) the rejection by the chairperson of the whole or any part of *A*'s proof of debt;

(*b*) the admission by the chairperson of the whole or any part of a proof of debt filed by another creditor;

(*c*) a request by another creditor to inspect the whole or any part of *A*'s proof of debt.

(9) Any dispute between the chairperson and the company, between the chairperson and one or more creditors in relation to the rejection of a proof of debt, or between 2 or more creditors in relation to the

inspection or admission of a proof of debt, may be adjudicated by an independent assessor appointed —

(*a*) by the agreement of all parties to the dispute; or

(*b*) if there is no such agreement, by the Court on the application of —

(i) any party to the dispute; or

(ii) the company (whether or not a party to the dispute).

(10) Where a creditor, the company or the chairperson disagrees with any decision of an independent assessor on an adjudication under subsection (9) in relation to the inspection, admission or rejection of a proof of debt, the creditor, company or chairperson (as the case may be) may file a notice of disagreement regarding that decision for consideration by the Court when the Court hears an application for the Court's approval under section 210(4) of the Companies Act of the compromise or arrangement in question.

(11) When exercising its discretion under section 210(4) of the Companies Act, the Court must take into account any notice of disagreement filed under subsection (10).

(12) The Minister may make regulations to provide for the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under this section.

(13) Without limiting subsection (12), the regulations mentioned in that subsection may provide for the following matters:

(*a*) the procedures for the making of a request, by a creditor who has filed a proof of debt, to inspect a proof of debt filed by any other creditor, and for the objection to the request by that other creditor;

(*b*) the period within which a proof of debt is to be adjudicated by the chairperson;

(*c*) the time and manner in which creditors are to be informed under subsection (7) of the results of the adjudication;

(*d*) the procedure relating to the resolution of any dispute mentioned in subsection (9).

(14) Despite anything in the regulations mentioned in subsection (12), the Court may —

(*a*) on an application by the company, approve any variation in or substitution of the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under this section; and

(*b*) on an application by any person subject to any requirement imposed by the regulations, grant relief to the person or extend the time for the person to comply with the requirement.

Power of Court to order re-vote

69.—(1) At the hearing of an application for the Court's approval under section 210(4) of the Companies Act of a compromise or an arrangement between a company and its creditors or any class of those creditors, the Court may order the company to hold another meeting of the creditors or class of creditors (called in this section the further meeting) for the purpose of putting the compromise or arrangement to a re-vote.

(2) When making an order under subsection (1), the Court may —

(*a*) make the order subject to such terms as the Court thinks fit;

(*b*) direct that the further meeting be summoned or held in such manner as the Court thinks fit; and

(*c*) make such orders or directions as the Court thinks appropriate in respect of one or more of the following matters:

(i) the classification of any creditor for the purposes of voting at the further meeting;

(ii) the quantum of any creditor's debt that is to be admitted for the purposes of voting at the further meeting;

(iii) the weight to be attached to the vote of any creditor at the further meeting.

Power of Court to cram down

70.—(1) This section applies where —

(*a*) a compromise or an arrangement between a company and its creditors or any class of those creditors has been voted on at a relevant meeting;

(*b*) the creditors meant to be bound by the compromise or arrangement are placed in 2 or more classes of creditors for the purposes of voting on the compromise or arrangement at the relevant meeting;

(*c*) the conditions in section 210(3AB)(*a*) and (*b*) of the Companies Act (insofar as they are applicable) are satisfied at the relevant meeting in respect of at least one class of creditors; and

(*d*) either or both of the conditions in section 210(3AB)(*a*) and (*b*) of the Companies Act (insofar as they are applicable) are not satisfied at the relevant meeting in respect of at least one class of creditors (each called in this section a dissenting class).

(2) Despite section 210(3AA) and (3AB)(*a*) and (*b*) of the Companies Act, the Court may, subject to this section and on the application of the company, or of a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the compromise or arrangement be binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.

(3) The Court may not make an order under subsection (2) unless —

(*a*) a majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting, have agreed to the compromise or arrangement;

(*b*) the majority in number of creditors mentioned in paragraph (*a*) represents three-fourths in value of the creditors meant to be bound by the compromise or

arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting; and

(*c*) the Court is satisfied that the compromise or arrangement does not discriminate unfairly between 2 or more classes of creditors, and is fair and equitable to each dissenting class.

(4) For the purposes of subsection (3)(*c*), a compromise or an arrangement is not fair and equitable to a dissenting class unless —

(*a*) no creditor in the dissenting class receives, under the terms of the compromise or arrangement, an amount that is lower than what the creditor is estimated by the Court to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement; and

(*b*) either of the following applies:

(i) where the creditors in the dissenting class are secured creditors, the terms of the compromise or arrangement —

(A) must provide for each creditor in the dissenting class to receive deferred cash payments totalling the amount of the creditor's claim that is secured by the security held by the creditor, and preserve that security and the extent of that claim (whether or not the property subject to that security is to be retained by the company or transferred to another entity under the terms of the compromise or arrangement);

(B) must provide that where the security held by any creditor in the dissenting class to secure the creditor's claim is to be realised by the company free of encumbrances, the creditor has a charge over the proceeds of the realisation to satisfy the creditor's claim that is secured by that security; or

(C) must provide that each creditor in the dissenting class is entitled to realise the indubitable equivalent of the security held by the creditor in order to satisfy the creditor's claim that is secured by that security;

(ii) where the creditors in the dissenting class are unsecured creditors, the terms of the compromise or arrangement —

(A) must provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim; or

(B) must not provide for any creditor with a claim that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property of the company on account of the subordinate claim or the member's interest.

(5) The Court may appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.

(6) In this section, "relevant meeting" means —

(*a*) in a case where the compromise or arrangement in question is subject to a re-vote under section 69(1), the meeting held for that purpose; or

(*b*) in any other case, the meeting ordered by the Court under section 210(1) of the Companies Act or, if that meeting is adjourned under section 210(3) of that Act, the adjourned meeting.

Power of Court to approve compromise or arrangement without meeting of creditors

71.—(1) Despite section 210 of the Companies Act but subject to this section, where a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors, the Court may, on an application made by the company, make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) of that Act or held.

(2) Subject to subsection (10), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the company and the creditors or class of creditors meant to be bound by the compromise or arrangement.

(3) The Court must not approve a compromise or an arrangement under subsection (1) unless —

(*a*) the company has provided each creditor meant to be bound by the compromise or arrangement with a statement that complies with subsection (6) and contains the following information:

(i) information concerning the company's property, assets, business activities, financial condition and prospects;

(ii) information on the manner in which the terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor;

(iii) such other information as is necessary to enable the creditor to make an informed decision whether to agree to the compromise or arrangement;

(*b*) the company has published a notice of the application under subsection (1) in the *Gazette* and in at least one English local daily newspaper, and has sent a copy of the notice published in the *Gazette* to the Registrar of Companies;

(*c*) the company has sent a notice and a copy of the application under subsection (1) to each creditor meant to be bound by the compromise or arrangement; and

(*d*) the Court is satisfied that had a meeting of the creditors or class of creditors been summoned, the conditions in section 210(3AB)(*a*) and (*b*) of the Companies Act (insofar as they relate to the creditors or class of creditors) would have been satisfied.

(4) Despite subsection (3)(*c*), the company may, if directed by the Court, give notice of the application under subsection (1) to the creditors or class of creditors in such manner as the Court may direct.

(5) The Court may grant its approval of a compromise or an arrangement subject to such alterations or conditions as the Court thinks just.

(6) The statement mentioned in subsection (3)(*a*) must —

(*a*) explain the effect of the compromise or arrangement and, in particular, state —

(i) any material interests of the directors of the company (whether as directors or as members, creditors or holders of units of shares of the company or otherwise); and

(ii) the effect that the compromise or arrangement has on those interests, insofar as that effect is different from the effect that the compromise or arrangement has on the like interests of other persons; and

(*b*) where the compromise or arrangement affects the rights of debenture holders, contain the like explanation with respect to the trustees for the debenture holders as, under paragraph (*a*), the statement is required to give with respect to the directors of the company.

(7) Each director, and each trustee for debenture holders, must give notice to the company of such matters relating to the director or trustee as may be necessary for the purposes of subsection (6) within 7 days

after the director or trustee receives a request in writing from the company for information as to such matters.

(8) Any director of a company or trustee for debenture holders who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(9) A person, being a director of a company or a trustee for debenture holders, is not guilty of an offence under subsection (8), if the person shows that the person's contravention of subsection (7) was due to the refusal of another director of the company or trustee for debenture holders to supply to the person the particulars of the person's material interests affected by the compromise or arrangement.

(10) Unless the Court orders otherwise, an order made under subsection (1) —

(*a*) has no effect until a copy of the order is lodged with the Registrar of Companies; and

(*b*) takes effect starting on the date of the lodgment.

(11) Where the terms of any compromise or arrangement approved under this section provide for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may after the expiration of 2 years, and must before the expiration of 10 years, starting on the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(12) The Official Receiver must —

(*a*) deal with any moneys received under subsection (11) as if the moneys were paid to the Official Receiver under section 197; and

(*b*) sell or dispose of any other consideration received under subsection (11) in such manner as the Official Receiver thinks fit, and deal with the proceeds of the sale or disposal

as if those proceeds were moneys paid to the Official Receiver under section 197.

Power of Court to review act, omission or decision, etc., after approval, etc., of compromise or arrangement

72.—(1) This section applies after a compromise or an arrangement, between a company and its creditors or any class of those creditors, has been approved by the Court under section 210(4) of the Companies Act or section 71(1).

(2) Where the Court is satisfied that the company or the scheme manager of the scheme of arrangement has committed an act or omission, or made a decision, that results in a breach of any term of the scheme of arrangement, the Court may, on the application of the company, the scheme manager or any creditor bound by the scheme of arrangement —

(*a*) reverse or modify the act or decision of the company or the scheme manager; or

(*b*) give such direction or make such order as the Court thinks fit to rectify the act, omission or decision of the company or scheme manager.

(3) The Court may, on an application of the company, the scheme manager or any creditor bound by the scheme of arrangement, clarify any term of the scheme of arrangement.

(4) No order or clarification made, and no direction given, by the Court under subsection (2) or (3) may alter, or affect any person's rights under, the terms of the compromise or arrangement as approved by the Court under section 210(4) of the Companies Act or section 71(1).

PART 6

CORPORATE INSOLVENCY — RECEIVERSHIP

Application of this Part

73.—(1) This Part applies to every person who —

(*a*) is appointed as receiver or manager of the property (whether in Singapore or elsewhere) of a company; or

(*b*) is appointed in Singapore, whether pursuant to an order of court or otherwise, as receiver or manager of the property in Singapore of a corporation.

(2) Every person who is appointed outside Singapore as receiver or manager of the property in Singapore of a corporation, must before acting as receiver or manager of the property in Singapore of that corporation, lodge with the Registrar of Companies a notice of appointment stating the date the person was so appointed.

(3) Upon the lodgment of the notice mentioned in subsection (2), sections 75 to 78, 81(2) and (3), 82, 85, 86 and 87 apply to the person and the corporation mentioned in that subsection.

(4) Any person who defaults in complying with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

(5) Any reference in this Part to a receiver includes a reference to a receiver and manager.

(6) In this section, a person is deemed to be appointed in Singapore as receiver or manager of any property if —

(*a*) the person is appointed as the receiver or manager of the property under the powers contained in any instrument; and

(*b*) the person's usual place of business is in Singapore.

(7) In this Part, "corporation" means a corporation other than a company.

Disqualification from appointment as receiver or manager

74.—(1) The following are not qualified to be appointed, and must not act, as a receiver or manager of the property of a company (called

in this subsection the relevant company), or of the property in Singapore of a corporation (called in this subsection the relevant corporation):

(*a*) a company or corporation;

(*b*) an undischarged bankrupt;

(*c*) a chargee or other security holder of any property of the relevant company or relevant corporation;

(*d*) an auditor of the relevant company or relevant corporation;

(*e*) a director, secretary or employee of the relevant company or relevant corporation, or of any company or corporation that is a chargee or other security holder of the property of the relevant company or relevant corporation;

(*f*) any individual (other than the Official Receiver) who is not a licensed insolvency practitioner.

(2) Subsection (1)(*a*) does not apply to any company or corporation authorised by any written law to act as a receiver or manager of the property of a company, or of the property in Singapore of a corporation.

(3) Subsection (1) does not apply to a person acting as a receiver or manager of the property of a company, or of the property in Singapore of a corporation, under an appointment validly made before the date of commencement of this section.

Liability of receiver or manager

75.—(1) This section applies to any person entering into possession of any property of a company, or of any property in Singapore of a corporation, as receiver or manager of the property for the purpose of enforcing any charge or other security.

(2) The person mentioned in subsection (1) is, despite any agreement to the contrary, but without prejudice to that person's rights against the company or corporation or any other person —

(*a*) personally liable on any contract entered into by that person in the performance of that person's functions (except insofar as the contract otherwise provides) and, to the

extent of any qualifying liability, on any contract of employment adopted by that person in the performance of those functions; and

(*b*) entitled in respect of each liability mentioned in paragraph (*a*) to an indemnity out of the property of the company or corporation.

(3) Subsection (2) must not be so construed as to constitute the person who is entitled to the charge or other security a mortgagee in possession.

(4) Where at any time the receiver or manager vacates office —

(*a*) the remuneration of the receiver or manager, and any expenses properly incurred by the receiver or manager; and

(*b*) any indemnity to which the receiver or manager is entitled out of the property of the company or corporation,

are to be charged on and paid out of any property of the company or corporation that is in the custody or under the control of the receiver or manager at that time, in priority to any charge or other security held by the person by whom or on whose behalf the receiver or manager was appointed.

(5) For the purposes of subsection (2)(*a*), a liability under a contract of employment is a qualifying liability if that liability is incurred while the receiver or manager is in office, is in respect of a contract of employment with the company or corporation, and is a liability to pay any of the following:

(*a*) a sum by way of wages or salary;

(*b*) remuneration payable in respect of accrued vacation leave;

(*c*) an amount due as a retrenchment benefit, an ex gratia payment, or a payment in lieu of notice under any contract of employment, award or agreement;

(*d*) contributions as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax.

(6) Where a sum payable in respect of a qualifying liability mentioned in subsection (2)(*a*) is payable partly before and partly after the appointment of the receiver or manager, the personal liability of the receiver or manager under subsection (2) only extends to so much of that sum as is payable after the appointment of the receiver or manager.

Application for directions

76.—(1) A receiver or manager of the property of a company, or of the property in Singapore of a corporation, may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

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

(3) On an application under subsection (1) or (2), the Court may give such directions, or may make such order (whether declaring the rights of persons before the Court or otherwise), as the Court thinks just.

Liability for invalid appointment of receiver or manager

77. Where the appointment of a person as the receiver or manager of the property of a company, or of the property in Singapore of a corporation, under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability that arises solely by reason of the invalidity of the appointment.

Power of Court to fix remuneration of receivers or managers

78.—(1) The Court may, on application of —

(*a*) a company or corporation;

(*b*) the liquidator of a company or corporation; or

(*c*) the person who appointed the receiver or manager,

by order fix the amount to be paid by way of remuneration to any person who has been appointed as receiver or manager of the property of the company or of the property in Singapore of the corporation.

(2) The power of the Court, where no previous order has been made with respect to that matter —

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

(*b*) is exercisable even though the receiver or manager has died or ceased to act before the making of the order or the application for the order; and

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

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

(4) The Court may from time to time, on an application made by the receiver or manager, or any of the persons mentioned in subsection (1), vary or amend an order made under this section.

Appointment of liquidator as receiver or manager

79. Where an application is made to the Court to appoint a receiver or manager of the property of a company, or of the property in Singapore of a corporation, on behalf of the debenture holders or other creditors of the company or corporation, and that company or corporation is being wound up by the Court, the Court may appoint the liquidator of that company or corporation as the receiver or manager of the property of the company or of the property in Singapore of that corporation.

Time from which appointment of receiver or manager is effective

80.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or of the property in Singapore of a corporation, the appointment is deemed to be made at the time the order is made.

(2) If any person is appointed as a receiver or manager of the property of a company, or of the property in Singapore of a corporation, under any powers contained in any instrument, the appointment —

(*a*) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by or on behalf of that person; and

(*b*) subject to paragraph (*a*), is deemed to be made at the time at which the instrument of appointment is so received.

(3) This section applies to the appointment of 2 or more persons as joint receivers or managers of the property of a company, or of the property in Singapore of a corporation, subject to such modifications as may be prescribed by regulations.

Notification of appointment of receiver or manager

81.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or of the property in Singapore of a corporation, or appoints such a receiver or manager under any powers contained in any instrument, that person must within 7 days after obtaining the order or making the appointment, lodge notice of that fact with the Official Receiver and the Registrar of Companies.

(2) Where any person appointed as receiver or manager of the property of a company, or of the property in Singapore of a corporation, under the powers contained in any instrument ceases to act as such, that person must within 7 days after the cessation lodge with the Official Receiver and the Registrar of Companies notice to that effect.

(3) Any person who defaults in complying with the requirements in subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Statement that receiver or manager is appointed

82.—(1) Where a receiver or manager of the property of a company, or of the property in Singapore of a corporation, has been appointed —

(*a*) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of the company or corporation, the receiver or manager, or the liquidator of the company or corporation, being a document on or in which the name of the company or corporation appears; and

(*b*) every Internet website of the company or corporation on or in which the name of the company or corporation appears,

must state, immediately after the name of the company or corporation where it first appears in that document or Internet website, that a receiver or manager has been appointed.

(2) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty:

(*a*) the company or corporation;

(*b*) each of the following persons who knowingly and wilfully authorises or permits the default:

(i) an officer of the company or corporation;

(ii) a liquidator of the company or corporation;

(iii) a receiver or manager of the property of the company, or of the property in Singapore of the corporation.

Provisions as to information where receiver or manager is appointed

83.—(1) Where a receiver or manager of the property of a company, or of the property in Singapore of a corporation, is appointed —

(*a*) the receiver or manager must immediately send notice to the company or corporation of the appointment;

(*b*) there must, within 14 days after the company or corporation receives the notice, or such longer period as may be allowed by the Court or by the receiver or manager, be made out and submitted to the receiver or manager in accordance with section 84 a statement in the prescribed form as to the affairs of the company or corporation; and

(*c*) the receiver or manager must within 30 days after receipt of the statement —

(i) lodge, with the Official Receiver and the Registrar of Companies, a copy of the statement and of any comments the receiver or manager sees fit to make in respect of the statement;

(ii) send to the company or corporation a copy of any comments mentioned in sub-paragraph (i) or, if the receiver or manager does not see fit to make any such comment, a notice to that effect; and

(iii) where the receiver or manager is appointed by or on behalf of the holders of debentures of the company or corporation, send to the trustees, if any, for those holders, a copy of the statement and any comments mentioned in sub-paragraph (i).

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

the successor of the receiver or manager and to any continuing receiver or manager.

(3) Where the company or corporation is being wound up, this section and section 84 apply even if the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) Any person who defaults in complying with any of the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Special provisions as to statement submitted to receiver or manager

84.—(1) The statement as to the affairs of a company or corporation required by section 83 to be submitted to the receiver or manager must show, as at the date of the appointment of the receiver or manager —

(*a*) the particulars of the assets, debts and liabilities of the company or corporation;

(*b*) the names and addresses of the creditors of the company or corporation;

(*c*) the securities held by the creditors respectively;

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

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

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

(*a*) all of the following persons:

(i) one or more of the persons who were, at the date of the appointment of the receiver or manager, the directors of the company or corporation;

(ii) the person who was at that date the secretary of the company or corporation; or

(*b*) if the persons mentioned in paragraph (*a*) are not able or willing to submit and verify the statement, such of the

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

(3) The persons mentioned in subsection (2)(*b*) are —

(*a*) any person who is or has been an officer of the company or corporation;

(*b*) any person who has taken part in the formation of the company or corporation at any time within one year before the date of the appointment of the receiver or manager; and

(*c*) any person who is in the employment of the company or corporation, or has been in the employment of the company or corporation within one year before the date of the appointment of the receiver or manager, and is in the opinion of the receiver or manager capable of giving the information required.

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

(5) Any person who defaults in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

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

Lodging of accounts of receivers or managers

85.—(1) Every receiver or manager of the property of a company, or of the property in Singapore of a corporation, must —

(*a*) within 30 days after the expiry of the period of 6 months starting on the date of the appointment of the receiver or manager and of every subsequent period of 6 months, and within 30 days after the receiver or manager ceases to act as receiver or manager, lodge with the Official Receiver and

the Registrar of Companies a detailed account in the prescribed form showing —

(i) the receipts and the payments of the receiver or manager during each applicable period of 6 months or, where the receiver or manager ceases to act as receiver or manager, during the period starting on the day immediately after the end of the last period of 6 months for which an account was lodged or was required to be lodged under this paragraph or starting on the date of the appointment (as the case may be) and ending on the date of the cessation;

(ii) the aggregate amount of those receipts and payments during all preceding periods of 6 months since the appointment; and

(iii) where the receiver or manager has been appointed pursuant to the powers contained in any instrument —

(A) the amount owing under that instrument at the time of the appointment, in the case of the first account, and at the expiry of every 6 months after the appointment and, where the receiver or manager has ceased to act as receiver or manager at the date of the cessation; and

(B) the estimate by the receiver or manager of the total value of all property of the company or corporation that are subject to that instrument; and

(*b*) before lodging any such account, verify by affidavit all accounts and statements contained in that account.

(2) The Official Receiver may, on the Official Receiver's own motion or on the application of the company or corporation or a creditor of the company or corporation, cause the accounts to be audited by a public accountant appointed by the Official Receiver.

(3) For the purpose of the audit mentioned in subsection (2), the receiver or manager must furnish the auditor with such vouchers and

information as the auditor requires, and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating to the accounts.

(4) Where the Official Receiver causes the accounts to be audited upon the request of the company or corporation or a creditor of the company or corporation, the Official Receiver may require the requesting company, corporation or creditor to give security for the payment of the cost of the audit.

(5) The costs of an audit under subsection (2) must be fixed by the Official Receiver and be paid by the receiver or manager, unless the Official Receiver otherwise determines.

(6) Every receiver or manager who defaults in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(7) For the purposes of this section, where a person is appointed outside Singapore as receiver or manager of the property in Singapore of a corporation, the date of lodgment of the notice of appointment mentioned in section 73(2) is deemed to be the date of appointment of that person.

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

86.—(1) Where —

(*a*) a person is appointed as receiver or manager of the property of a company, or of the property in Singapore of a corporation, on behalf of the holders of any debentures of the company or corporation secured by a floating charge; or

(*b*) possession is taken by or on behalf of debenture holders of any such property comprised in or subject to a floating charge,

then, if the company or corporation is not at the time in the course of being wound up, debts that in a winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund

payments, and any amount that in a winding up is payable pursuant to section 203(5) or (7), must be paid, out of any such property coming to the hands of the receiver or manager or other person taking possession, in priority to any claim for principal or interest in respect of the debentures and in the same order of priority as is prescribed by section 203 in respect of those debts and amounts.

(2) In subsection (1), "floating charge" means a charge which, as created, was a floating charge.

(3) For the purposes of subsection (1), the references in section 203(1)(*e*), (*g*) and (*h*) to the commencement of the winding up are to be read as a reference to the date of the appointment of the receiver or manager or of possession being taken as mentioned in that subsection, as the case requires.

(4) Any payments made under this section must be recouped as far as may be out of the property of the company or corporation available for payment of general creditors.

Enforcement of duty of receiver or manager, etc., to make returns

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

(2) If it appears that any receiver or manager of the property of a company, or of the property in Singapore of a corporation —

(*a*) has misapplied, retained or become liable or accountable for any money or property of the company or corporation; or

(*b*) has been guilty of any misfeasance or breach of trust or duty in relation to the company or corporation,

the Court may, on the application of any creditor or contributory, or of the liquidator, of the company or corporation, examine the conduct of the receiver or manager, and compel the receiver or manager to repay or restore the money or property, or any part of the money or property, with interest at such rate as the Court thinks just, or to contribute such sum to the property of the company or corporation by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This section has effect even though the offence is one for which the offender is criminally liable.

PART 7

JUDICIAL MANAGEMENT

Interpretation of this Part

88.—(1) In this Part —

"chattels leasing agreement" means an agreement, which is capable of subsisting for more than 3 months, for the bailment of goods;

"company" means any corporation liable to be wound up under this Act;

"hire-purchase agreement" has the meaning given by section 2(1) of the Hire-Purchase Act (Cap. 125);

"judicial manager", in relation to a company, means a person appointed under this Part to manage the company and its affairs, business and property, but does not, unless a contrary intention appears, include an interim judicial manager;

"property", in relation to a company, includes money, goods, things in action and every description of property, whether real or personal, and whether in Singapore or elsewhere, and also obligations and every description of interest whether

present or future or vested or contingent arising out of, or incidental to, property;

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

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

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

(2) For the purposes of this Part —

(*a*) a company is "in judicial management" while the appointment of a judicial manager of the company has effect;

(*b*) a company "enters judicial management" when the appointment of a judicial manager takes effect;

(*c*) a company ceases to be in judicial management when the company is discharged from judicial management in accordance with this Part;

(*d*) a company does not cease to be in judicial management merely because a judicial manager vacates office (by reason of resignation, death or otherwise) or is removed from office;

(*e*) where successive persons are appointed as judicial manager of a company, the company is deemed to "enter judicial management" as at the time the first appointment of a judicial manager takes effect, unless the Court orders otherwise; and

(*f*) a company is deemed to be unable to pay its debts if any of the paragraphs in section 125(2) is satisfied.

(3) A person may be appointed as judicial manager of a company —

(*a*) by a judicial management order made by the Court under section 91; or

(*b*) by the creditors of the company under section 94(11)(*e*).

Purpose of judicial management and judicial manager

89.—(1) The judicial manager of a company must perform the judicial manager's functions to achieve one or more of the following purposes of judicial management:

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

(*b*) the approval under section 210 of the Companies Act or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section;

(*c*) a more advantageous realisation of the company's assets or property than on a winding up.

(2) A judicial manager or an interim judicial manager of a company must perform the functions of the judicial manager or interim judicial manager in the interests of the company's creditors as a whole.

(3) A judicial manager or an interim judicial manager of a company must perform the functions of the judicial manager or interim judicial manager as quickly and efficiently as is reasonably practicable.

(4) A judicial manager or an interim judicial manager of a company is an officer of the Court (whether or not the judicial manager or interim judicial manager is appointed by the Court).

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

90. Where a company, or any creditor of the company, considers —

(*a*) that the company is, or is likely to become, unable to pay its debts; and

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

an application may be made to the Court under section 91 for an order that the company should be placed under the judicial management of a judicial manager.

Power of Court to make judicial management order and appoint judicial manager

91.—(1) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or any creditor (including any contingent or prospective creditor), pursuant to section 90, makes an application (called in this section an application for a judicial management order) for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if —

(*a*) the Court is satisfied that the company is or is likely to become unable to pay its debts; and

(*b*) the Court considers that the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in section 89(1).

(2) A judicial management order made under subsection (1) must direct that during the period in which the company is in judicial management, the affairs, business and property of the company must be managed by a judicial manager appointed by the Court.

(3) In any application for a judicial management order under subsection (1), the following apply:

(*a*) the applicant must nominate a person who is a licensed insolvency practitioner, but is not the auditor of the company, to act as a judicial manager;

(*b*) the person nominated to act as a judicial manager must file with the Court a statutory declaration that the person is not in a position of conflict of interest in accepting the appointment and performing the role of judicial manager;

(*c*) the Court may reject the nomination of the applicant and appoint another person in place of the applicant's nominee;

(*d*) where a nomination is made by the company —

(i) a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination; and

(ii) the Court may, if satisfied as to the number and value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate another person in place of the applicant's nominee and, if the Court sees fit, adopt their nomination;

(*e*) where a nomination is made by a person mentioned in subsection (4)(*b*)(ii) who has appointed or is entitled to appoint a receiver and manager, the Court must, when making a judicial management order, appoint the nominee of that person as judicial manager unless the Court considers that the appointment would not be appropriate because of the particular circumstances of the case;

(*f*) nothing in this subsection prevents the Minister from nominating a person to act as a judicial manager if the Minister considers that the public interest so requires, and in such a case the Minister may be heard in support of the Minister's nomination and, for this purpose, may be represented;

(*g*) despite paragraph (*a*), where a person is nominated by the Minister and appointed by the Court to act as a judicial manager, that person need not be a licensed insolvency practitioner.

(4) When an application for a judicial management order is made to the Court —

(*a*) notice of the application must be published in the *Gazette* and in an English local daily newspaper, and a copy of the notice must be sent to the Registrar of Companies; and

(*b*) notice of the application must be given —

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

(ii) to any person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the company's property under the terms of any debentures of the company secured by a floating charge, or by a

floating charge and one or more fixed charges, that would be valid and enforceable in case of a liquidation of the company.

(5) For the purposes of subsection (4)(*b*)(ii), in the case of any such floating charge created by an instrument before 15 May 1987, that instrument is deemed to contain a power to appoint a receiver and manager in the event that an application under this section is made for the appointment of a judicial manager, with the result that the holder of that floating charge must, in accordance with subsection (4)(*b*), be given notice of the application.

(6) Subject to subsection (10), the Court must dismiss an application for a judicial management order if —

(*a*) the making of the order is opposed by a person who has appointed, will appoint or is entitled to appoint, a receiver and manager mentioned in subsection (4)(*b*)(ii); and

(*b*) the Court is satisfied that the prejudice that would be caused to that person if the order is made is disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed.

(7) On hearing the application for a judicial management order, the Court may dismiss the application or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that the Court thinks fit.

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

(*a*) after the company has gone into liquidation;

(*b*) where the company is a banking corporation or is a finance company licensed under the Finance Companies Act;

(*c*) where the company is a licensed insurer licensed under the Insurance Act (Cap. 142); or

(*d*) where the company belongs to such class of companies as the Minister may by order in the *Gazette* prescribe.

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

(10) Nothing in this section precludes a Court —

(*a*) from making a judicial management order and appointing a judicial manager, if the Court considers that the public interest so requires; or

(*b*) from appointing, at any time between the making of an application for a judicial management order and the making of the judicial management order or the determination of the application, an interim judicial manager under section 92.

Power of Court to appoint interim judicial manager

92.—(1) At any time between the making of an application for a judicial management order and the making of the judicial management order or the determination of the application, the Court may, on the application of the person applying for the judicial management order, the company or any creditor of the company, appoint an interim judicial manager to act as such pending the making of a judicial management order.

(2) The Court may, if the Court sees fit, appoint as interim judicial manager, the person nominated in the application for a judicial management order or any other licensed insolvency practitioner.

(3) Section 91(3) applies, with the necessary modifications, to the nomination and appointment of a person to act as interim judicial manager.

(4) The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.

Restrictions on acts of company pending hearing of judicial management application

93. At any time during the period between the making of a judicial management application and the determination of the application, the Court may, on the application of any creditor of the company —

(*a*) make an order to require or restrict any act of, or the exercise of any powers of, the company pending the determination of the application; or

(*b*) make either or both of the following orders, each of which is to be in force for such part of the period as the Court thinks fit:

(i) an order restraining the company from disposing of the property of the company other than in good faith and in the ordinary course of the business of the company;

(ii) an order restraining the company from transferring any share in, or altering the rights of any member of, the company.

Judicial management by resolution of creditors

94.—(1) Where a company considers that —

(*a*) the company is, or is likely to become, unable to pay its debts; and

(*b*) there is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1),

the company may, instead of applying to the Court for a judicial management order, obtain under subsection (11) a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager in accordance with the requirements in this section.

(2) A company that proposes to obtain under subsection (11) a resolution of the company's creditors for the company to be placed under judicial management must give at least 7 days' written notice in

the prescribed form of its intention to appoint an interim judicial manager under subsection (3) —

(*a*) to the proposed interim judicial manager; and

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

(3) A company may appoint an interim judicial manager under this subsection only if all the following conditions are met:

(*a*) the appointment is authorised by way of a resolution of the members of the company or, where so authorised by the constitution of the company, by a resolution of its board of directors;

(*b*) the notice period mentioned in subsection (2) has expired;

(*c*) not more than 21 days have elapsed after the date of the notice mentioned in subsection (2);

(*d*) each person to whom the notice mentioned in subsection (2) was given has consented in writing to the appointment of the interim judicial manager;

(*e*) the proposed interim judicial manager has lodged, with the Official Receiver and the Registrar of Companies, a statutory declaration by the proposed interim judicial manager stating that —

(i) the proposed interim judicial manager is not in a position of conflict of interest;

(ii) in the view of the proposed interim judicial manager, one or more purposes of judicial management mentioned in section 89(1) can be achieved; and

(iii) the proposed interim judicial manager consents to be appointed as interim judicial manager;

(*f*) the company's directors have lodged with the Registrar of Companies a statutory declaration stating that —

(i) the company is or is likely to become unable to pay its debts;

(ii) the company will summon a meeting of the company's creditors to be held on a date not later than 30 days after the date of lodgment of the statutory declaration mentioned in paragraph (*e*); and

(iii) the directors believe that one or more of the purposes of judicial management mentioned in section 89(1) is likely to be achieved;

(*g*) the proposed interim judicial manager is a licensed insolvency practitioner, and is not the auditor of the company.

(4) The interim judicial manager appointed under subsection (3) —

(*a*) is an officer of the court;

(*b*) has, and may exercise, all the functions and powers of a judicial manager appointed by a Court under section 91, subject to such limitations and restrictions as may be prescribed by regulations; and

(*c*) must adjudicate any proofs of debt filed by creditors for purposes of voting at the meeting of creditors to be convened under subsection (7).

(5) Upon the appointment of the interim judicial manager under subsection (3), the company must —

(*a*) within 3 days after the appointment of the interim judicial manager, cause a written notice of the appointment to be lodged in the prescribed form with the Official Receiver and the Registrar of Companies; and

(*b*) within 7 days after the lodgment of the notice under paragraph (*a*), cause a notice of the appointment to be published in the *Gazette* and in an English local daily newspaper.

(6) The term of the appointment of the interim judicial manager ends on the occurrence of the earlier of the following events:

(*a*) the expiry of 30 days after the date of the appointment, or such extension of that period as the Official Receiver may allow in any particular case;

(*b*) the appointment of a judicial manager, or the rejection of the resolution to place the company under judicial management at a meeting of creditors convened under subsection (7).

(7) After the lodgment of the statutory declaration mentioned in subsection (3)(*e*), the company must convene a meeting of the creditors of the company to be held not later than 30 days after the date of lodgment of the statutory declaration, at a time and place convenient to the majority in value of the creditors, to consider a resolution for the company to be placed under judicial management.

(8) The company must, in convening the meeting under subsection (7) —

(*a*) give to the creditors at least 14 days' written notice of the meeting, together with —

(i) a statement showing the names of all creditors and the amounts of their claims; and

(ii) a full statement of the company's affairs showing in respect of the company's assets or property the method and manner in which the valuation of the assets or property was arrived at; and

(*b*) cause notice of the meeting of the creditors to be published at least 10 days before the date of the meeting in an English local daily newspaper.

(9) The directors of the company must appoint at least one of their number to attend the meeting convened under subsection (7).

(10) Each director appointed under subsection (9), and the secretary of the company, must attend the meeting convened under subsection (7) and disclose to the meeting the company's affairs

and the circumstances leading up to the proposed judicial management.

(11) At the meeting convened under subsection (7) —

(*a*) the creditors may appoint one of their number, the interim judicial manager, or any director appointed under subsection (9), to be chairperson of the meeting (called in this section the chairperson);

(*b*) the chairperson must determine whether the meeting is being held at a time and place convenient to the majority in value of the creditors, and the chairperson's decision is final;

(*c*) if the chairperson decides that the meeting is not being held at a time and place convenient to that majority, the meeting lapses and a further meeting must be summoned by the company as soon as is practicable;

(*d*) the company is placed under the judicial management of a judicial manager if a majority in number and value of the creditors present and voting resolve to do so; and

(*e*) where the meeting passes a resolution to place the company under the judicial management of a judicial manager, the meeting must approve, by a majority in number and value of the creditors of the company present and voting, the appointment of a person as judicial manager.

(12) The judicial manager must be a licensed insolvency practitioner who is not the auditor of the company.

(13) An interim judicial manager or a judicial manager must not be appointed under this section —

(*a*) if an application for a judicial management order has been made under section 91(1), and that application has not been withdrawn or decided by the Court;

(*b*) after the company has gone into liquidation;

(*c*) if the company is a banking corporation or is a finance company licensed under the Finance Companies Act;

(*d*) if the company is a licensed insurer licensed under the Insurance Act; or

(*e*) if the company belongs to such class of companies as the Minister may by order in the *Gazette* prescribe.

(14) Any person who fails to comply with subsection (5), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Effect of application for judicial management order or filing of written notice of appointment of interim judicial manager

95.—(1) Subject to subsection (2), in any case where a company makes an application for a judicial management order under section 91, or lodges a written notice of appointment of an interim judicial manager under section 94(5)(*a*), during the automatic moratorium period —

(*a*) no order may be made, and no resolution may be passed, for the winding up of the company;

(*b*) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court may impose;

(*c*) no other proceedings may be commenced or continued against the company, except with the leave of the Court and subject to such terms as the Court may impose; and

(*d*) no execution or other legal process, may be commenced or continued, and no distress may be levied, against the company or its property, except with the leave of the Court and subject to such terms as the Court may impose.

(2) Subsection (1) does not apply to a company that makes an application for a judicial management order or lodges a written notice of appointment of an interim judicial manager under section 94(5)(*a*) if, within the period of 12 months immediately before the date on which that application is made or that written notice is lodged, the company —

(*a*) made an earlier application for a judicial management order, to which subsection (1) applied; or

(*b*) lodged an earlier written notice of appointment of an interim judicial manager under section 94(5)(*a*) to which subsection (1) applied.

(3) Subsection (1) does not affect any of the following:

(*a*) the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations;

(*b*) the commencement or continuation of any proceedings that may be prescribed by regulations.

(4) In this section, "automatic moratorium period" means —

(*a*) in any case where a company makes an application for a judicial management order under section 91, the period starting on the date on which the application is made, and ending on the date on which the application is decided by the Court; or

(*b*) in any case where a company lodges a written notice of appointment of an interim judicial manager under section 94(5)(*a*), the period starting on the date of lodgment of the written notice and ending on the earliest of the following dates:

(i) the date of the appointment of a judicial manager;

(ii) the date on which the term of appointment of the interim judicial manager ends under section 94(6);

(iii) the rejection of the resolution to place the company under judicial management at a meeting of creditors convened under section 94(7).

Effect of company entering judicial management

96.—(1) When a company enters judicial management —

(*a*) any receiver, or receiver and manager, must vacate office; and

(*b*) any application for the winding up of the company must be dismissed.

(2) Where any receiver, or receiver and manager, has vacated office under subsection (1)(*a*), the following must be charged on and, subject to subsection (4), paid out of any property which was in the custody or under the control of the receiver, or receiver and manager, at the time the company enters judicial management, in priority to any security held by the person by or on whose behalf the receiver, or receiver and manager, was appointed:

(*a*) the remuneration of, and any expenses properly incurred by, the receiver, or receiver and manager;

(*b*) any indemnity to which the receiver, or receiver and manager, is entitled out of the assets or property of the company.

(3) A receiver, or receiver and manager, of a company who vacates office under subsection (1)(*a*) is not required, on or after so vacating office, to take steps to comply with any duty imposed on the receiver, or receiver and manager, by section 86.

(4) During the period in which a company is in judicial management —

(*a*) no order may be made, and no resolution may be passed, for the winding up of the company;

(*b*) no receiver or manager may be appointed over any property or undertaking of the company;

(*c*) no other proceedings may be commenced or continued against the company, except —

(i) with the consent of the judicial manager; or

(ii) with the leave of the Court and subject to such terms as the Court may impose;

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

(i) with the consent of the judicial manager; or

(ii) with the leave of the Court and subject to such terms as the Court may impose;

(*e*) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except —

(i) with the consent of the judicial manager; or

(ii) with the leave of the Court and subject to such terms as the Court may impose; and

(*f*) despite sections 18 and 18A of the Conveyancing and Law of Property Act, no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except —

(i) with the consent of the judicial manager; or

(ii) with the leave of the Court and subject to such terms as the Court may impose.

(5) Subsection (4) does not affect any of the following:

(*a*) the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations;

(*b*) the commencement or continuation of any proceedings that may be prescribed by regulations.

Notification of judicial management

97.—(1) During the period in which the company is in judicial management —

(*a*) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) that is issued by or on behalf of the company or the judicial manager, being a document on or in which the name of the company appears; and

(*b*) every Internet website of the company on or in which the name of the company appears,

must state, immediately after the name of the company where it first appears in that document or Internet website, that the affairs, business and property of the company are being managed by the judicial manager.

(2) Where an interim judicial manager has been appointed over a company —

(*a*) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) that is issued by or on behalf of the company or the interim judicial manager, being a document on or in which the name of the company appears; and

(*b*) every Internet website of the company on or in which the name of the company appears,

must state, immediately after the name of the company where it first appears in that document or Internet website, that the affairs, business and property of the company are being managed by the interim judicial manager.

(3) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty:

(*a*) the company;

(*b*) each of the following persons who knowingly and wilfully authorises or permits the default:

(i) the judicial manager;

(ii) the interim judicial manager;

(iii) any officer of the company.

Vacancy in appointment of judicial manager or interim judicial manager

98.—(1) If a vacancy occurs by death, resignation or otherwise in the office of a judicial manager or interim judicial manager of a company who was appointed by the Court, the Court may, on the application of the company, any creditor of the company, or the Minister, by order fill the vacancy.

(2) If a judicial manager of a company, who was appointed under section 94, dies, resigns or otherwise vacates the office of judicial manager —

(*a*) the creditors may (by a majority in number and value, voting either in person or by proxy) fill the vacancy; and

(*b*) a meeting of the creditors may be summoned by any 2 of their number for the purpose of filling the vacancy.

General powers and duties of judicial manager

99.—(1) When a company enters judicial management, the judicial manager must take into the custody or under the control of the judicial manager all the property to which the company is or appears to be entitled.

(2) During the period in which a company is in judicial management, all powers conferred and duties imposed on the directors of the company by this Act or the Companies Act, or by the constitution of the company, must be exercised and performed by the judicial manager and not by the directors, but nothing in this subsection requires the judicial manager to call any meetings of the company.

(3) The judicial manager of a company —

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

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

(4) Without limiting subsection (3)(*a*), the powers conferred by that provision include the powers specified in the First Schedule.

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

(6) Nothing in this section authorises the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the date of the company's entry into judicial management, unless —

(*a*) the making of the payment is sanctioned by the Court or the payment is made pursuant to a compromise or an arrangement so sanctioned;

(*b*) the payment is made towards discharging sums secured by a security or payable under a hire-purchase agreement, chattels leasing agreement or retention of title agreement to which section 100(2), (5) and (6) applies;

(*c*) such payment is necessary or incidental to the performance of the judicial manager's functions; or

(*d*) such payment is necessary to assist the achievement of one or more of the purposes of the judicial management mentioned in section 89(1).

(7) The judicial manager of a company may at any time, if the judicial manager thinks fit, and must, if the judicial manager is directed to do so by the Court, summon a meeting of the company's creditors.

(8) Any alteration in the company's constitution made by virtue of an order under subsection (3)(*b*) is of the same effect as if duly made by resolution of the company, and the provisions of this Act and the Companies Act apply accordingly to the constitution as so altered.

(9) A copy of an order under subsection (3)(*b*) sanctioning the alteration of the company's constitution must, within 14 days after the making of the order, be delivered by the judicial manager to the Registrar of Companies.

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

Power to deal with charged property, etc.

100.—(1) The judicial manager of a company may dispose of or otherwise exercise the judicial manager's powers in relation to any property of the company, which is subject to a security to which this subsection applies, as if the property were not subject to the security.

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

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

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

would be likely to promote one or more of the purposes of judicial management under section 89(1), the Court may by order authorise the judicial manager to dispose of the property, as if the property were not subject to the security, or to dispose of the goods, as if all rights of the owner of the goods under the hire-purchase agreement, chattels leasing agreement or retention of title agreement were vested in the company.

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

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

(5) It is a condition of an order made under subsection (2) that —

(*a*) the net proceeds of the disposal must be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement, chattels leasing agreement or retention of title agreement; and

(*b*) where the net proceeds of the disposal are less than the sums secured by the security or payable under any of those agreements, the holder of the security or the owner of the goods (as the case may be) may prove on a winding up for any balance due to the holder or the owner.

(6) Where a condition imposed under subsection (5) relates to 2 or more securities, that condition requires the net proceeds of the disposal to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) The judicial manager must give 7 days' notice, of an application by the judicial manager to the Court to dispose of property subject to a security under subsection (2), to the holder of the security or to the owner of the goods which are subject to any of the agreements mentioned in that subsection, and the holder or the owner (as the case may be) may oppose the disposal of the property.

(8) Where the Court makes an order under subsection (2), the judicial manager must lodge a copy of the order, within 14 days after the making of the order, with the Registrar of Companies.

(9) If the judicial manager, without reasonable excuse, fails to comply with subsection (7) or (8), the judicial manager shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

(10) Nothing in this section affects an application to the Court under section 115.

Super priority for rescue financing

101.—(1) At any time when a company is in judicial management, the Court may, on an application by the judicial manager, make one or more of the following orders:

(*a*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up mentioned in section 203(1)(*b*);

(*b*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;

(*c*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by —

(i) a security interest on property of the company that is not otherwise subject to any security interest; or

(ii) a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph;

(*d*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if —

(i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and

(ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A judicial manager that makes an application under subsection (1) must send a notice of the application to each creditor of the company.

(3) Any creditor of the company may oppose an application under subsection (1).

(4) Where a company that has 2 or more super priority debts is wound up, the super priority debts —

(*a*) rank equally in priority between themselves; and

(*b*) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(5) Where a company that has any super priority debt or debts is wound up, the super priority debt or debts constitute one class of debts and, despite section 203 —

(*a*) the super priority debt or debts are to be paid in priority to all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts; and

(*b*) if the property of the company available for the payment of the super priority debt or debts is insufficient to meet the super priority debt or debts, the super priority debt or debts —

(i) have priority over the claims of the holders of any debentures of the company secured by a floating charge (which, as created, was a floating charge); and

(ii) are to be paid out of any property comprised in or subject to that floating charge.

(6) The reversal or modification on appeal of an order under subsection (1)(*c*) or (*d*) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing (from which arose the debt intended to be secured by that security interest) was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(7) For the purposes of subsection (1)(*d*)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if —

(*a*) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*);

(*b*) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*); or

(*c*) the Court grants any relief (other than compensation) that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(8) Sections 205, 224, 225 and 228 do not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(9) The judicial manager must, within 14 days after the date of an order made under subsection (1), lodge a copy of the order with the Registrar of Companies.

(10) In this section —

"rescue financing" means any financing that satisfies one or more of the following conditions:

(*a*) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;

(*b*) the financing is necessary for the Court's approval under section 210(4) of the Companies Act or section 71(5) of a compromise or an arrangement mentioned in section 210(1) of the Companies Act or section 71(1) (as the case may be) involving a company that obtains the financing;

(*c*) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

"security interest" means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

"super priority debt" means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1)(*b*), over all the preferential debts specified in section 203(1)(*a*) to (*i*) and all other unsecured debts, if the company is wound up.

Agency and liability for contracts

102.—(1) The judicial manager of a company —

(*a*) is deemed to be the agent of the company; and

(*b*) is entitled to have the judicial manager's remuneration and expenses defrayed, out of the property of the company that is in the custody or under the control of the judicial manager, in accordance with section 114 and in priority to all other debts except those subject to a security to which section 100(2) or 101(1)(*c*) or (*d*) applies.

(2) Nothing in this section limits the right of a judicial manager to seek an indemnity from any other person in respect of contracts entered into by the judicial manager that are approved by the Court.

Suspension of requirements to call annual general meeting and to file annual returns and audited accounts

103. During the period in which a company is in judicial management, the judicial manager, the company and any officer of the company (as the case may be) are not required to comply with sections 175, 197 and 201 of the Companies Act.

Vacation of office and release

104.—(1) The judicial manager of a company —

(*a*) may at any time be removed from office by order of the Court; and

(*b*) may, with the leave of the Court and subject to such conditions as the Court may impose, resign from the office of judicial manager by giving notice of resignation to the Court.

(2) The judicial manager of a company must vacate office if —

(*a*) being a licensed insolvency practitioner at the time of his or her appointment, the judicial manager ceases to be a licensed insolvency practitioner; or

(*b*) the company is discharged from judicial management.

(3) Where at any time a person ceases to be a judicial manager of a company, whether by virtue of this section or by reason of the person's death, any remuneration and expenses properly incurred by the person must be charged on and paid out of the property of the company in the custody or under the control of the person in accordance with section 114 and in priority to all other debts, except those subject to a security to which section 100(2) or 101(1)(*c*) or (*d*) applies.

(4) Where a person ceases to be a judicial manager of a company, from such time as the Court may determine, the person is released from any liability in respect of any act or omission by the person in the management of the company or otherwise in relation to the person's conduct as a judicial manager, but nothing in this section relieves the person of any of the liabilities mentioned in section 112(5).

(5) Where the office of a judicial manager has been vacated, the Court may appoint another licensed insolvency practitioner as judicial manager of the company.

Information to be given by judicial manager

105.—(1) Where a company enters judicial management, the judicial manager must —

(*a*) within 3 days after the company's entry into judicial management —

(i) in a case where the judicial manager was appointed by the Court under section 91(1), lodge with the Official Receiver and the Registrar of Companies a copy of the judicial management order; or

(ii) in a case where the judicial manager was appointed by the creditors of the company under section 94(11)(*e*), lodge with the Official Receiver and the Registrar of Companies a written notice of the appointment in the prescribed form;

(*b*) within 3 days after the company's entry into judicial management, send to the company, and publish in the *Gazette* and in an English local daily newspaper, a notice of the judicial management order or the notice of the appointment of the judicial manager mentioned in paragraph (*a*)(ii), as the case may be; and

(*c*) within 28 days after the company's entry into judicial management, unless the Court otherwise directs, send a notice of the judicial management order or the notice of the appointment of the judicial manager mentioned in paragraph (*a*)(ii) (as the case may be) to every creditor of the company (so far as the judicial manager is aware of the creditor's address).

(2) The Registrar of Companies must enter the copy of the judicial management order mentioned in subsection (1)(*a*)(i) or the notice of appointment of the judicial manager mentioned in subsection (1)(*a*)(ii) (as the case may be) in the Registrar's records of the company.

(3) Any judicial manager who, without reasonable excuse, fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Company's statement of affairs

106.—(1) Where a company enters judicial management, the relevant persons must submit a statement as to the affairs of the company to the judicial manager within 28 days (or such longer period not exceeding 2 months as the judicial manager may allow) after the company receives the judicial manager's notice mentioned in section 105(1)(*b*).

(2) The statement of affairs mentioned in subsection (1) —

(*a*) must show, as at the date that the company entered judicial management —

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

(ii) the names and addresses of the company's creditors;

(iii) the securities held by each of those creditors;

(iv) the dates when each of those securities was given; and

(v) such further or other information as may be prescribed by regulations; and

(*b*) must be verified by an affidavit of the relevant persons mentioned in subsection (1).

(3) For the purposes of subsections (1) and (2), the relevant persons are —

(*a*) all of the following persons:

(i) one or more of the persons who are, at the date of the company's entry into judicial management, the directors of the company;

(ii) the person who is at that date the secretary of the company; or

(*b*) if the persons mentioned in paragraph (*a*) are not able or willing to submit and verify the statement of affairs mentioned in subsection (1), such of the following

persons as the judicial manager may require to submit and verify the statement of affairs:

(i) any person who is or has been an officer of the company;

(ii) any person who has taken part in the company's formation at any time within one year before the date of the company's entry into judicial management;

(iii) any person who is or has been employed by the company, whether under a contract of service or a contract for services, and is in the judicial manager's opinion capable of giving the information required.

(4) Any person who, without reasonable excuse, fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty.

(5) Any statement of affairs submitted under subsection (1) may be used in evidence against any person making or concurring in making it.

(6) The judicial manager must lodge a copy of the company's statement of affairs with the Registrar of Companies immediately after receiving that statement of affairs.

(7) Any person making the statement of affairs mentioned in subsection (1) and the affidavit verifying the statement of affairs must be paid by the judicial manager, out of the judicial manager's receipts, such costs and expenses incurred in and about the preparation and making of the statement of affairs and the affidavit as the judicial manager may consider reasonable, subject to an appeal to the Court.

Statement of proposals

107.—(1) Where a company enters judicial management, the judicial manager must, within 90 days (or such longer period as may be allowed under subsection (3)) after the company's entry into judicial management —

(*a*) send to the Registrar of Companies and to every creditor (so far as the judicial manager is aware of the creditor's

address) a statement of the judicial manager's proposals for achieving one or more of the purposes mentioned in section 89(1); and

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

(2) The judicial manager must also, within 90 days (or such longer period as may be allowed under subsection (3)) after the company's entry into judicial management, either —

(*a*) send a copy of the statement to every member of the company (so far as the judicial manager is aware of the member's address); or

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

(3) A judicial manager may obtain an extension of the period specified in subsection (1) or (2) —

(*a*) by making an application at any time to the Court; or

(*b*) subject to subsection (4), by obtaining the approval of a majority in number and value of the creditors of the company (voting either in person or by proxy) —

(i) in writing; or

(ii) at a creditors' meeting.

(4) An extension of time may be obtained under subsection (3)(*b*) —

(*a*) only for a period not exceeding 60 days;

(*b*) only once;

(*c*) only if the period specified in subsection (1) or (2) has not been extended by the Court; and

(*d*) only before the expiry of the period specified in subsection (1) or (2).

Consideration of proposals by creditors' meeting

108.—(1) A meeting of creditors, summoned under section 107(1), must decide whether to approve the judicial manager's proposals.

(2) The meeting must, subject to subsection (3), be conducted in accordance with the regulations.

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

(4) The judicial manager must —

(*a*) report the result of the meeting to the Court; and

(*b*) give notice of that result to the Registrar of Companies and to such other persons or bodies as the Court may approve.

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

(*a*) by order discharge the company from judicial management, and make such consequential provision as the Court thinks fit;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make an interim order or any other order that the Court thinks fit.

(6) A copy of every order of the Court made under subsection (5) must be published in an English local daily newspaper.

(7) Where the company is discharged under subsection (5) from judicial management, the judicial manager must immediately lodge with the Official Receiver and the Registrar of Companies a copy of the order effecting the discharge.

(8) Any judicial manager who, without reasonable excuse, fails to comply with subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Committee of creditors

109.—(1) Where a meeting of creditors summoned under section 107(1) has approved the judicial manager's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on the committee under subsection (2).

(2) If such a committee is established, the committee may require the judicial manager to attend before it and furnish it with such information relating to the carrying out by the judicial manager of the judicial manager's functions as the committee may reasonably require.

Duty to manage company's affairs, etc., in accordance with approved proposals

110.—(1) Where the judicial manager's proposals have been approved by a meeting of creditors summoned under section 107(1), then, subject to any order under section 115, it is the duty of the judicial manager to manage the affairs, business and property of the company in accordance with the proposals as from time to time revised by the judicial manager.

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

(*a*) must —

(i) send to the Registrar of Companies and every creditor of the company (so far as the judicial manager is aware of the creditor's address) a statement of the judicial manager's proposed revisions; and

(ii) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice; and

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

(3) The judicial manager must also either —

(*a*) send a copy of the statement to every member of the company (so far as the judicial manager is aware of the member's address); or

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

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

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

End of judicial management

111.—(1) A judicial manager appointed by a judicial management order under section 91 is, unless the order specifies otherwise, appointed for a period that expires 180 days after the date of the making of the order, and upon the expiry of that period, the company is discharged from judicial management.

(2) A judicial manager appointed by a meeting of creditors under section 94(11)(*e*) is appointed for a period that expires 180 days after the date of the approval of the judicial manager's appointment at the meeting of creditors, and upon the expiry of that period, the company is discharged from judicial management.

(3) Subject to subsections (4) and (5), a judicial manager may obtain an extension of the judicial manager's term of office —

(*a*) by making an application to the Court; or

(*b*) by obtaining the approval of a majority in number and value of the creditors of the company (voting either in person or by proxy) —

(i) in writing; or

(ii) at a creditors' meeting.

(4) On an application under subsection (3)(*a*), the Court —

(*a*) may extend the term of office of the judicial manager for a specified period;

(*b*) may extend the term of office of a judicial manager even though that term of office has previously been extended by the Court or by approval of the company's creditors under subsection (3)(*b*); and

(*c*) may only extend the judicial manager's term of office before the expiry of that term of office.

(5) An extension of the judicial manager's term of office may be obtained under subsection (3)(*b*) —

(*a*) only for a period not exceeding 6 months;

(*b*) only once;

(*c*) only if the Court has not previously granted or dismissed an application under subsection (3)(*a*); and

(*d*) only before the expiry of that term of office.

(6) Any creditor who is dissatisfied with an extension of the judicial manager's term of office under subsection (3)(*b*) may apply to the Court for an order terminating, or reducing the period of extension of, the appointment of the judicial manager, and the Court on hearing such an application may make such order as the Court thinks fit.

(7) Where a judicial manager's term of office has expired or has been extended by the Court or under subsection (3)(*b*), the judicial manager must file notice of the expiry or extension of the term with —

(*a*) the Court (unless the extension was by the Court);

(*b*) the Registrar of Companies; and

(*c*) the Official Receiver.

(8) Any judicial manager who, without reasonable excuse, fails to comply with subsection (7) shall be guilty of an offence and shall be

liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Duty to apply for discharge from judicial management

112.—(1) The judicial manager of a company must apply to the Court for the company to be discharged from judicial management if it appears to the judicial manager that —

(*a*) one or more of the purposes of judicial management mentioned in section 89(1) has been achieved; or

(*b*) none of the purposes of judicial management mentioned in section 89(1) is capable of achievement.

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

(*a*) by order discharge the company from judicial management and make such consequential provision as the Court thinks fit;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make an interim order or any other order the Court thinks fit.

(3) Where the company is discharged from judicial management, the judicial manager must immediately lodge with the Official Receiver and the Registrar of Companies a copy of the order effecting the discharge.

(4) Where a company is discharged from judicial management under this Part, or where a person ceases to be a judicial manager pursuant to section 104, the judicial manager or person may apply to the Court to be released, and the Court may, if the Court thinks fit, make an order releasing the judicial manager or person from liability in respect of any act or omission by the judicial manager or person in the management of the company or otherwise in relation to the judicial manager's or person's conduct as judicial manager.

(5) Any release ordered by the Court under subsection (4) does not relieve the judicial manager or person from liability for any misapplication or retention of any money or property of the

company or for which the judicial manager or person has become accountable, or from any law to which the judicial manager or person would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

Application to Court for approval of remuneration and expenses of former judicial manager

113.—(1) Where a person ceases to be a judicial manager, and the person's remuneration and expenses as judicial manager were not previously approved by the Court or the committee of creditors before the person's cessation, the person may apply to the Court for the approval of the person's remuneration and expenses incurred during the person's term of office as judicial manager.

(2) On an application for an order under subsection (1), the Court may make an order approving the remuneration and expenses, and may make such other order as the Court thinks fit, including that the remuneration and expenses be charged as an expense of winding up under section 203(1)(*b*).

Order of priority for expenses of judicial manager and interim judicial manager

114.—(1) The expenses of a judicial manager are payable in the following order of priority:

(*a*) first, any debt arising from rescue financing obtained pursuant to an order under section 101(1)(*b*);

(*b*) second, any sums payable in respect of any debts or liabilities of the company incurred during judicial management, including any debt arising from rescue financing obtained pursuant to an order under section 101(1)(*a*);

(*c*) third, any other remuneration or expenses properly incurred by the judicial manager in performing the judicial manager's functions in the judicial management of the company.

(2) For the purposes of this section —

(*a*) a judicial manager includes an interim judicial manager appointed under section 92 or 94(3); and

(*b*) judicial management includes interim judicial management by an interim judicial manager.

Protection of interests of creditors and members

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

(*a*) that the company's affairs, business and property are being or have been managed by the judicial manager or interim judicial manager in a manner that is or was unfairly prejudicial to the interests of —

(i) its creditors or members generally;

(ii) some part of its creditors or members (including at least the applicant); or

(iii) a single creditor that represents at least one quarter in value of the claims against the company;

(*b*) that any actual or proposed act or omission of the judicial manager or interim judicial manager is or would be prejudicial in the manner mentioned in paragraph (*a*);

(*c*) in a case of interim judicial management or judicial management under section 94, that the interim judicial management or judicial management of the company should not have been commenced at all;

(*d*) that one or more of the purposes of judicial management mentioned in section 89(1) have been achieved;

(*e*) that none of the purposes of judicial management mentioned in section 89(1) is capable of achievement; or

(*f*) that the judicial manager is not managing the company in accordance with the proposals which had been approved by a meeting of creditors summoned under section 107(1).

(2) On an application under subsection (1), the Court may —

(*a*) make such order as the Court thinks fit for giving relief in respect of the matters complained of;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make an interim order or any other order that the Court thinks fit.

(3) Subject to subsection (4), an order under this section may —

(*a*) regulate the future management by the judicial manager or interim judicial manager of the company's affairs, business and property;

(*b*) require the judicial manager or interim judicial manager —

(i) to refrain from doing or continuing an act complained of by the applicant; or

(ii) to do an act that the applicant has complained the judicial manager or interim judicial manager has omitted to do;

(*c*) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; or

(*d*) discharge the company from judicial management or interim judicial management, and make such consequential provision as the Court thinks fit.

(4) An order under this section must not prejudice or prevent the implementation of any compromise or arrangement approved under section 210 of the Companies Act or section 71.

(5) Where the company is discharged from judicial management or interim judicial management under subsection (3)(*d*), the judicial manager or interim judicial manager must immediately lodge with the Official Receiver and the Registrar of Companies a copy of the order effecting the discharge.

(6) Any judicial manager or interim judicial manager who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

(7) In this section —

"interim judicial management" means the management of a company's affairs, business and property by an interim judicial manager;

"interim judicial manager" means any person appointed as an interim judicial manager under section 92 or 94(3).

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

116.—(1) Where employees of a company —

(*a*) are creditors, by reason that wages or salary are payable to them whether by way of allowance or reimbursement under contracts of employment or any award or agreement regulating conditions of employment or otherwise; and

(*b*) are members of a trade union that is recognised by the company under the Industrial Relations Act (Cap. 136),

it is sufficient compliance by the judicial manager with sections 105, 107 and 108 if the notice, statement of proposals and revised proposals mentioned in those sections are sent to the trade union representing the employees.

(2) A trade union to which subsection (1) applies —

(*a*) is entitled to represent any such employees at a meeting of creditors summoned under section 107(1) or, with the leave of the Court, to apply to the Court under section 115 on their behalf; and

(*b*) may make representations to the judicial manager on behalf of those employees,

in respect of any matter connected with or arising from the continuation or termination of their contracts of employment, or any matter relating to any award made by the Industrial Arbitration

Court under the Industrial Relations Act or any collective agreement certified under that Act that affects those employees.

Application of certain provisions in Companies Act and Part 5 to company under judicial management

117. At any time when a company is in judicial management —

(*a*) section 210 of the Companies Act applies as if —

(i) the following subsection replaces subsections (1) and (2) of that section:

"(1) Where a compromise or an arrangement is proposed between a company under judicial management and its creditors or any class of those creditors, the Court may, on the application of the judicial manager, order a meeting of the creditors or class of creditors to be summoned in such manner as the Court directs."; and

(ii) the following subsections replace subsections (3), (3AA) and (3AB) of that section:

"(3) A meeting held pursuant to an order under subsection (1) may be adjourned from time to time if the resolution for the adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting.

(3AA) If the conditions set out in subsection (3AB) are satisfied, a compromise or an arrangement is binding on the company, on the judicial manager, and on the creditors or class of creditors, as the case may be.

(3AB) The conditions mentioned in subsection (3AA) are as follows:

(*a*) a majority in number, or such other number as the Court may order, of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;

(*b*) the majority in number, or other number, of the creditors or class of creditors (as the case may be) mentioned in paragraph (*a*) represents three-fourths in value of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting or the adjourned meeting;

(*c*) the compromise or arrangement is approved by order of the Court.";

(*b*) section 68 applies as if —

(i) the following subsection replaces subsection (1) of that section:

"(1) Where the Court orders under section 210(1) of the Companies Act a meeting of the creditors, or a class of creditors, of a company under judicial management to be summoned, the judicial manager must state in every notice mentioned in section 211(1) of that Act summoning the meeting (called in this section the notice summoning the meeting) —

(*a*) the manner in which a creditor is to file a proof of debt with the company; and

(*b*) the period within which the proof is to be filed.”; and

(ii) the word “company” in subsections (3), (4), (9), (10) and (14)(*a*) of that section was replaced by the words “judicial manager”;

(*c*) section 69 applies as if the following subsection replaces subsection (1) of that section:

“(1) At the hearing of an application for the Court’s approval under section 210(4) of the Companies Act of a compromise or an arrangement between a company under judicial management and its creditors or any class of those creditors, the Court may order the judicial manager to hold another meeting of the creditors or class of creditors (called in this section the further meeting) for the purpose of putting the compromise or arrangement to a re-vote.”;

(*d*) section 70 applies as if —

(i) the following subsection replaces subsection (2) of that section:

“(2) Despite section 210(3AA) and (3AB)(*a*) and (*b*) of the Companies Act, the Court may, subject to this section and on the application of the judicial manager, or a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the compromise or arrangement be binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement.”;

(ii) the following paragraph replaces paragraph (*a*) of subsection (4) of that section:

“(*a*) no creditor in the dissenting class receives, under the terms of the

compromise or arrangement, an amount that is lower than what the creditor is estimated by the Court to receive in the most likely scenario if the compromise or arrangement does not become binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement; and”; and

(iii) the following subsection replaces subsection (5) of that section:

“(5) The Court may appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement.”; and

(*e*) section 71 applies as if —

(i) the following subsections replace subsections (1) and (2) of that section:

“(1) Despite section 210 of the Companies Act but subject to this section, where a compromise or an arrangement is proposed between a company under judicial management and its creditors or any class of those creditors, the Court may, on an application made by the judicial manager, make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) of that Act or held.

(2) Subject to subsection (10), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the judicial manager, the company and the creditors or class of creditors meant to be bound by the compromise or arrangement.";

(ii) the words "the company has provided" in subsection (3)(*a*) of that section were replaced by the words "the judicial manager has provided"; and

(iii) the word "company" in subsections (3)(*b*) and (*c*), (4) and (7) of that section was replaced by the words "judicial manager".

Transition from judicial management to winding up

118. Where a judicial manager makes an application to wind up the company —

(*a*) despite section 111, the term of office of the judicial manager is extended to the date on which the winding up application is determined or withdrawn; and

(*b*) the company is discharged from judicial management on the date the winding up application is determined or withdrawn.

PART 8

WINDING UP

Division 1 — Preliminary provisions applicable to winding up

Modes of winding up and application of this Division

119.—(1) The winding up of a company may be either —

(*a*) by the Court; or

(*b*) voluntary.

(2) Unless the context otherwise requires, the provisions of this Act with respect to the winding up of a company apply to both modes of winding up mentioned in subsection (1).

Government bound by certain provisions

120. The provisions of this Part and Parts 9, 10 and 11 relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors bind the Government.

Liability of present and past members as contributories, and unlimited liability of directors

121.—(1) On a company being wound up, every present and past member is liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to subsection (2) and the following qualifications:

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

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

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

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

(*e*) in the case of a company limited by guarantee, subject to subsection (4), no contribution is required from any member exceeding the amount undertaken to be contributed by that member to the assets of the company in the event the company is wound up;

(*f*) nothing in this Act invalidates any provision contained in any policy of insurance or other contract under which the liability of individual members on the policy or contract is restricted, or under which the funds of the company are alone made liable in respect of the policy or contract;

(*g*) a sum due to any member in that member's character of a member by way of dividends, profits or otherwise is not a debt of the company payable to that member, in a case of competition between that member 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.

(2) In the winding up of a limited company, any director, whether past or present, whose liability is unlimited is, in addition to the director's liability, if any, to contribute as an ordinary member, liable to make a further contribution as if the director were, at the commencement of the winding up, a member of an unlimited company.

(3) Despite subsection (2) —

(*a*) a past director is not liable to make a further contribution if the past director has ceased to hold office for one year or more before the commencement of the winding up;

(*b*) a past director is not liable to make a further contribution in respect of any debt or liability of the company contracted after the past director ceased to hold office; and

(*c*) subject to the constitution of the company, a director is not liable to make a further contribution unless the Court considers it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

(4) On the winding up of a company limited by guarantee, every member is liable, in addition to the amount undertaken to be contributed by the member to the assets of the company in the event the company is wound up, to contribute to the extent of any sums unpaid on any shares held by the member.

Nature of liability of contributory

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

Contributories in case of death or bankruptcy of member

123.—(1) If a contributory (called in this subsection the deceased contributory) dies, whether before or after being placed on the list of contributories —

(*a*) the deceased contributory's personal representatives are liable in due course of administration to contribute to the assets of the company in discharge of the deceased contributory's liability, and are contributories accordingly; and

(*b*) if the deceased contributory's personal representatives default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of the estate of the deceased contributory of the money due.

(2) If a contributory (called in this subsection the bankrupt contributory) becomes bankrupt or assigns his or her estate for the benefit of his or her creditors, whether before or after being placed on the list of contributories —

(*a*) the bankrupt contributory's trustee must represent the bankrupt contributory for all the purposes of the winding up and is a contributory accordingly; and

(*b*) there may be proved against the bankrupt contributory's estate the estimated value of the bankrupt contributory's liability to future calls as well as calls already made.

Division 2 — Provisions applicable to winding up by Court

Subdivision (1) — General

Application for winding up

124.—(1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:

(*a*) the company;

(*b*) any director of the company;

(*c*) any creditor, including a contingent or prospective creditor, of the company;

(*d*) a contributory, any person who is the personal representative of a deceased contributory, or the Official Assignee of the estate of a bankrupt contributory;

(*e*) the liquidator of the company;

(*f*) the Minister mentioned in section 241 of the Companies Act, under that section;

(*g*) the Minister, on any ground specified in section 125(1)(*b*), (*d*), (*l*), (*m*) or (*n*);

(*h*) the judicial manager appointed under this Act for the company;

(*i*) in the case of a company that is carrying on or has carried on banking business, the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186).

(2) Despite subsection (1), the following apply:

(*a*) a person mentioned in subsection (1)(*b*) may not make a winding up application unless a prima facie case for winding up is established to the satisfaction of the Court, and the Court grants that person leave to bring the winding up application;

(*b*) a person mentioned in subsection (1)(*d*) may not make a winding up application on any of the grounds specified in section 125(1)(*a*), (*b*), (*c*), (*e*) or (*i*), unless —

(i) the company has no member; or

(ii) the shares in respect of which the contributory was a contributory, or some of those shares —

(A) were originally allotted to the contributory;

(B) have been held by the contributory and registered in the contributory's name for at least 6 months during the 18 months before the making of the winding up application; or

(C) have devolved on the contributory through the death or bankruptcy of a former holder;

(*c*) an application to wind up a company on the ground specified in section 125(1)(*b*) must not be made by any person except a contributory or the Minister, and must not be made before the expiration of 14 days after the last day on which the statutory meeting ought to have been held;

(*d*) the Court must not hear a winding up application made 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;

(*e*) where a company is being wound up voluntarily, the Court must not make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Circumstances in which company may be wound up by Court

125.—(1) The Court may order the winding up of a company if —

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

(*b*) default is made by the company in lodging the statutory report or in holding the statutory meeting;

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

(*d*) the company has no member;

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

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

(*g*) an inspector appointed under Part IX of the Companies Act has reported that he or she is of the opinion —

(i) that the company cannot pay its debts and should be wound up; or

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

(*h*) the period, if any, fixed for the duration of the company by the constitution of the company expires or, where the constitution of the company provides that the company is to be dissolved on the occurrence of an event, that event happens;

(*i*) the Court is of the opinion that it is just and equitable that the company be wound up;

(*j*) the company has held a licence under any written law relating to banking, and that licence has been revoked or has expired and has not been renewed;

(*k*) the company is carrying on or has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking;

(*l*) the company has carried on multi-level marketing or pyramid selling in contravention of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act (Cap. 190);

(*m*) the company, being a foreign corporate entity that was registered as a company limited by shares under section 359(1) of the Companies Act subject to conditions, has breached any of the conditions of registration imposed under section 359(2) of that Act; or

(*n*) the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

(2) A company is deemed to be unable to pay its debts if —

(*a*) a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding $15,000 then due has served on the company, by leaving at the registered office of the company, a written demand by the creditor or the creditor's lawfully authorised agent requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

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

(*c*) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court must take into account the contingent and prospective liabilities of the company.

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

(4) For the purpose of subsection (1)(*n*), a certificate issued by the Minister charged with the responsibility for internal security, stating that the Minister is satisfied that the company mentioned in the

certificate is being used for purposes against national security or interest, is conclusive evidence that the company is being used for such purposes.

(5) Upon the making of an application by the Minister under section 124(1)(*g*) for the winding up of a company under subsection (1)(*n*) on the ground that the company is being used for purposes against national security or interest, the Court may, upon the application of that Minister, pending the hearing of the winding up application or the making of a winding up order, make —

(*a*) an order restraining all or any of the following from doing any act or from carrying out any activity specified in the order:

(i) the company;

(ii) the company's directors;

(iii) the chief executive officer;

(iv) officers or employees of the company; and

(*b*) such other interim orders as the Court thinks fit.

(6) Any person who acts in contravention of an order made by the Court under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) The Minister may, by order in the *Gazette*, amend subsection (2)(*a*) by substituting a different sum for the sum for the time being specified in that provision.

Commencement of winding up

126.—(1) In any case where, before the making of a winding up application, a resolution has been passed by the company for voluntary winding up —

(*a*) the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and

(*b*) unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up is deemed to have commenced at the time of the making of the application for the winding up.

Payment of preliminary costs, etc.

127.—(1) Any person (other than the company itself or the liquidator of the company), on whose application any winding up order is made, must at the person's own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator must, unless the Court orders otherwise, reimburse the applicant out of the assets of the company the costs incurred by the applicant in any such proceedings (whether taxed or agreed).

(3) Where the company has no assets or has insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since the formation of the company, the costs mentioned in subsection (2) or so much of those costs as are not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding $3,000, be reimbursed to the applicant out of moneys provided by Parliament for the purpose.

(4) Where any winding up order is made upon the application of the company or the liquidator of the company, the costs incurred must, subject to any order of the Court, be paid out of assets of the company in like manner as if those costs were the costs of any other applicant.

Powers of Court on hearing winding up application

128.—(1) On hearing a winding up application, the Court may dismiss the application with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that the Court thinks fit, but the Court must not refuse to make a winding up order on the ground only that —

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

(*b*) the company has no assets; or

(*c*) in the case of an application by a contributory, there will be no assets available for distribution amongst the contributories.

(2) The Court may, on the winding up application coming on for hearing or at any time on the application of the person making the winding up application, the company, or any person who has given notice that he or she intends to appear on the hearing of the winding up application —

(*a*) direct that any notices be given or any steps be taken before or after the hearing of the winding up application;

(*b*) dispense with any notices being given or steps being taken which are required by this Act, or by any prior order of the Court;

(*c*) direct that oral evidence be taken on the winding up application or any matter relating to the winding up application;

(*d*) direct a speedy hearing or trial of the winding up application or any issue or matter;

(*e*) allow the winding up application to be amended or withdrawn; and

(*f*) give such directions as to the proceedings as the Court thinks fit.

(3) Where the winding up application is made on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report must be lodged or that a meeting must be held, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power to stay or restrain proceedings against company

129. At any time after the making of a winding up application and before a winding up order has been made —

(*a*) the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding; and

(*b*) the Court may stay or restrain the proceedings accordingly on such terms as the Court thinks fit.

Avoidance of dispositions of property and certain attachments, etc.

130.—(1) Any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

(2) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

Winding up application to be lis pendens

131. Any application for winding up a company constitutes a lis pendens within the meaning of any law relating to the effect of a lis pendens upon purchasers or mortgagees.

Copy of order to be lodged, etc.

132.—(1) Within 7 days after the making of a winding up order, the applicant for the winding up order must lodge with the Official Receiver and the Registrar of Companies notice of —

(*a*) the order and the date of the order; and

(*b*) the name and address of the liquidator.

(2) The applicant for the winding up order must, within 7 days after the passing and entering of the winding up order —

(*a*) lodge a copy of the order with the Official Receiver and the Registrar of Companies;

(*b*) cause a copy of the order to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and

(*c*) deliver a copy of the order to the liquidator with a statement that the requirements of this subsection have been complied with.

(3) If default is made in complying with subsection (1) or (2), the applicant for the winding up order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Effect of winding up order

133.—(1) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding may be proceeded with or commenced against the company except —

(*a*) by the leave of the Court; and

(*b*) in accordance with such terms as the Court may impose.

(2) Subject to section 198, an order for winding up a company operates in favour of all the creditors and contributories of the company as if made on the joint application of a creditor and of a contributory.

Subdivision (2) — Liquidators

Appointment, style, etc., of liquidators

134. The following provisions with respect to liquidators have effect on a winding up order being made:

(*a*) the Court may appoint a licensed insolvency practitioner or, if the Official Receiver consents, the Official Receiver, to be the liquidator;

(*b*) at any time when the Official Receiver is the liquidator of the company, the Official Receiver may 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;

(*c*) the Court may make any appointment and order required to give effect to any determination mentioned in paragraph (*b*), and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter mentioned in paragraph (*b*), the Court must decide the difference and make such order on the difference as the Court thinks fit;

(*d*) in a case where a winding up order is made under section 125(1)(*n*) on the ground that the company is being used for purposes against national security or interest, the Official Receiver must be the liquidator of the company;

(*e*) any vacancy in the office of a liquidator appointed by the Court must be filled by the Court, and, pending the appointment of a replacement liquidator by the Court, the Official Receiver is by virtue of the Official Receiver's office the liquidator during such vacancy;

(*f*) where the Official Receiver is the provisional liquidator or liquidator of the company, including where the Official Receiver is the liquidator under paragraph (*e*), the Official Receiver may, at any time, appoint one or more licensed insolvency practitioners to act as the provisional liquidator or liquidator in place of the Official Receiver;

(*g*) the appointment of any licensed insolvency practitioner appointed as a provisional liquidator or liquidator under paragraph (*f*) does not take effect until that person agrees to be appointed as a provisional liquidator or liquidator of the company;

(*h*) a liquidator must be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator", and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the

particular company in respect of which the liquidator is appointed, and not by the liquidator's individual name.

Nomination and consent of liquidator

135.—(1) Subject to subsections (3) and (4), when making a winding up application, the applicant must nominate in writing a licensed insolvency practitioner to be appointed liquidator.

(2) Before the hearing of the winding up application, the applicant or the applicant's solicitor must obtain and file the written consent of the licensed insolvency practitioner to being nominated.

(3) The applicant may nominate the Official Receiver to be appointed as liquidator if —

(*a*) the applicant has taken reasonable steps, but is unable, to obtain the consent of a licensed insolvency practitioner to be appointed as liquidator; and

(*b*) the Official Receiver consents to being nominated to be appointed as liquidator.

(4) Where the winding up application is made under section 125(1)(*n*) on the ground that the company is being used for purposes against national security or interest, the applicant must nominate the Official Receiver to be liquidator.

Provisions where person other than Official Receiver is appointed liquidator

136. Where, in the winding up of a company by the Court, a person other than the Official Receiver is appointed liquidator, that person —

(*a*) is not capable of acting as liquidator until that person has notified the Registrar of Companies of the appointment and has given security in the prescribed manner to the satisfaction of the Official Receiver; and

(*b*) must give the Official Receiver such information, such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be required for enabling the Official Receiver to perform the Official Receiver's duties under this Act.

Control of liquidators by Official Receiver

137.—(1) Where, in the winding up of a company by the Court, a person other than the Official Receiver is the liquidator, the Official Receiver is to take cognizance of the liquidator's conduct, and if —

(*a*) the liquidator does not faithfully perform the liquidator's duties or duly observe all the requirements imposed on the liquidator by any written law or otherwise with respect to the performance of the liquidator's duties; or

(*b*) any complaint is made to the Official Receiver by any creditor or contributory in relation to the liquidator's conduct,

the Official Receiver must inquire into the matter and take such action thereon as the Official Receiver thinks expedient.

(2) The Official Receiver may —

(*a*) at any time require any liquidator of a company that is being wound up by the Court to answer any inquiry in relation to any winding up in which the liquidator is engaged; and

(*b*) if the Official Receiver thinks fit, apply to the Court to examine the liquidator or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct an investigation to be made of the books and vouchers of any liquidator of a company that is being wound up by the Court.

Provisional liquidator

138.—(1) The Court may appoint the Official Receiver or a licensed insolvency practitioner provisionally as a liquidator at any time after the making of a winding up application and before the making of a winding up order, and the provisional liquidator has and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by regulations or as the Court may specify in the order.

(2) An order appointing a provisional liquidator under subsection (1) must —

(*a*) be in the prescribed form;

(*b*) state the nature and give a short description of the property of which the provisional liquidator is ordered to take possession; and

(*c*) state the duties to be performed by the provisional liquidator.

(3) Before the hearing of the application for the appointment of a provisional liquidator, the applicant or the applicant's solicitor must obtain and file the consent in writing of the Official Receiver or licensed insolvency practitioner (as the case may be) to act as provisional liquidator.

General provisions as to liquidators

139.—(1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator, other than the Official Receiver, is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator, other than the Official Receiver, is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

(*a*) by agreement between the liquidator and the committee of inspection, if any;

(*b*) failing such agreement, or where there is no committee of inspection, by a resolution passed, at a meeting of creditors convened in accordance with subsection (4), by a majority of not less than 75% in value and 50% in number of the creditors present and voting (in person or by proxy) at the meeting and whose debts have been admitted for the purpose of voting; or

(*c*) failing a determination in a manner mentioned in paragraph (*a*) or (*b*), by the Court.

(4) A meeting mentioned in subsection (3)(*b*) must be convened by the liquidator by a notice to each creditor, to which notice must be

attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by the liquidator.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(*a*), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company (excluding treasury shares), confirm or vary the determination.

(6) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(*b*), the Court may, on the application of the liquidator or a member or members mentioned in subsection (5), confirm or vary the determination.

(7) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a company is entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(8) If more than one liquidator is appointed by the Court, the Court must 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.

(9) Subject to this Act, the acts of a liquidator are valid despite any defects that may be discovered in the liquidator's appointment or qualification after those acts.

(10) In subsection (5), the reference to "treasury shares" includes a reference to shares held by a subsidiary under section 21(4B) or (6C) of the Companies Act.

Custody and vesting of company's property

140.—(1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator must take into his or her custody or under his or her control all the property and things in action to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description

belonging to the company, or held by trustees on its behalf, vests in the liquidator.

(3) Upon the making of an order under subsection (2) —

(*a*) the property to which the order relates vests in the liquidator; and

(*b*) the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding that relates to that property, or that is necessary to be brought or defended for the purpose of effectually winding up the company and recovering the property of the company.

(4) Where an order is made under subsection (2), every liquidator of a company in relation to which the order is made must lodge within 7 days after the making of the order —

(*a*) a copy of the order with the Registrar of Companies; and

(*b*) where the order relates to land, a copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every liquidator who defaults in complying with this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(5) No order made under subsection (2) has any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum of the order is made by or with the appropriate authority.

Statement of company's affairs to be submitted to Official Receiver

141.—(1) There must be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the company as at the date of the winding up order showing —

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

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

(*c*) the securities held by the company's creditors respectively;

(*d*) the dates when the securities mentioned in paragraph (*c*) were respectively given; and

(*e*) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement must be submitted by —

(*a*) all of the following persons:

(i) one or more of the persons who are, at the date of the winding up order, directors;

(ii) the secretary of the company; or

(*b*) such of the following persons as the Official Receiver or the liquidator, subject to the direction of the Court, requires:

(i) any person who is or has been an officer of the company;

(ii) any 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.

(3) The statement must be submitted within 14 days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator must within 7 days after receiving the statement —

(*a*) cause a copy of the statement to be filed with the Court and lodged with the Registrar of Companies; and

(*b*) where the Official Receiver is not the liquidator, cause a copy of the statement to be lodged with the Official Receiver.

(4) Any person making the statement required by this section or a statement of concurrence under section 142(1) may, subject to the regulations, be allowed, and be paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of that statement as the Official Receiver or the liquidator considers reasonable, subject to an appeal to the Court.

(5) Every person who, without reasonable excuse, defaults in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty.

(6) Any person stating himself or herself, in writing, to be a creditor of the company may —

(*a*) personally or by agent inspect the statement of affairs filed under this section at all reasonable times; and

(*b*) upon payment of the prescribed fee, take any copy of the statement of affairs or extract from the statement of affairs.

(7) Any person untruthfully stating himself or herself to be a creditor under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both.

Statements of concurrence

142.—(1) Where a statement of affairs has been submitted to the Official Receiver or the liquidator, the Official Receiver or the liquidator (as the case may be) may require any of the persons mentioned in section 141(2) to submit a statement of concurrence verified by affidavit, stating that the person concurs in the statement of affairs.

(2) A statement of concurrence made under subsection (1) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence —

(*a*) is not in agreement with the persons making the statement of affairs;

(*b*) considers the statement of affairs to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring in the statement of affairs.

(3) Every statement of concurrence must be submitted to the Official Receiver or the liquidator (as the case may be) within 14 days after a

request to submit the statement of concurrence or within such extended time as the Official Receiver or the liquidator or the Court may specify.

(4) Where the Official Receiver is not the liquidator, a copy of the statement of concurrence must be lodged with the Official Receiver.

Report by liquidator

143.—(1) The liquidator must as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver —

(*a*) as to the amount of capital of the company issued, subscribed and paid up and the estimated amount of assets and liabilities;

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether, in the liquidator's opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business of the company.

(2) The liquidator may also, if the liquidator thinks fit, make further reports to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver —

(*a*) stating the manner in which the company was formed, and whether in the liquidator's opinion any fraud has been committed, or any material fact has been concealed, by any person in the promotion or formation of the company, or by any officer in relation to the company since the formation of the company;

(*b*) stating whether any officer of the company has contravened or failed to comply with any of the provisions of this Act or the Companies Act; and

(*c*) specifying any other matter that in the liquidator's opinion is desirable to bring to the notice of the Court.

Powers of liquidator

144.—(1) The liquidator may, after authorisation by either the Court or the committee of inspection —

(*a*) carry on the business of the company so far as is necessary for the beneficial winding up of the company, but such authorisation is not necessary to so carry on the business of the company during the 4 weeks immediately after the date of the winding up order;

(*b*) subject to section 203, pay any class of creditors in full;

(*c*) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or by which the company may be rendered liable;

(*d*) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts, and any claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting, or supposed to subsist, between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of any such call, debt, liability or claim;

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

(*f*) appoint a solicitor —

(i) to assist the liquidator in the liquidator's duties; or

(ii) to bring or defend any action or legal proceeding in the name and on behalf of the company; and

(*g*) assign, in accordance with the regulations, the proceeds of an action arising under section 224, 225, 228, 238, 239 or 240.

(2) The liquidator may —

(*a*) compromise any debt due to the company, other than calls and liabilities to calls and other than a debt where the amount claimed by the company to be due to it exceeds the prescribed amount;

(*b*) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract, with power to transfer the whole of the immovable and movable property and things in action of the company to any person or company or to sell the same in parcels;

(*c*) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents, and for that purpose use when necessary the company's seal, if any;

(*d*) prove, rank and claim in the bankruptcy under any law of any contributory or debtor for any balance against the estate of the contributory or debtor, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the contributory or debtor;

(*e*) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(*f*) raise on the security of the assets of the company any money required;

(*g*) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or the estate of the contributory or debtor which cannot be conveniently done in the name of

the company, and in all such cases the money due is, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, deemed due to the liquidator himself or herself;

(*h*) appoint an agent to do any business which the liquidator is unable to do himself or herself; and

(*i*) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

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

Exercise and control of liquidator's powers

145.—(1) Subject to this Part and Parts 9, 10 and 11, the liquidator must, in the administration of the assets of the company and in the distribution of the assets of the company among the creditors of the company, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories, in case of conflict, override any directions given by the committee of inspection.

(2) The liquidator —

(*a*) may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and

(*b*) must summon meetings —

(i) at such times as the creditors or contributories by resolution direct; or

(ii) whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

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

(4) Subject to this Part, the liquidator must use the liquidator's own discretion in the management of the affairs and property of the company and the distribution of the assets of the company.

Payment by liquidator into bank

146.—(1) Every liquidator must, in the manner and at the times prescribed by the regulations, pay the money received by the liquidator into such bank account as is prescribed by those regulations or as is specified by the Court.

(2) If any liquidator retains for more than 10 days a sum exceeding $1,000, or such other amount as the Court in any particular case authorises the liquidator to retain, then, unless the liquidator explains the retention to the satisfaction of the Court, the liquidator must pay interest on the amount so retained in excess, computed starting on the expiration of those 10 days until the liquidator has complied with subsection (1), at the rate of 20% per annum, and is liable —

(*a*) to disallowance of all or such part of the liquidator's remuneration as the Court thinks just;

(*b*) to be removed from office by the Court; and

(*c*) to pay any expenses occasioned by reason of the default.

(3) Any liquidator who pays any sums received as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence.

Release of liquidators and dissolution of company

147. When the liquidator —

(*a*) has realised all the property of the company, or so much of the property of the company as can in the liquidator's opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or

(*b*) has resigned or has been removed from office,

the liquidator may apply to the Court —

(*c*) for an order that the liquidator be released; or

(*d*) for an order that the liquidator be released and that the company be dissolved.

Final account and dissolution

148.—(1) Before a liquidator makes an application to the Court under section 147, the liquidator must call a meeting of the company and the creditors for the purpose of laying before them an account showing how the winding up has been conducted and the property of the company has been disposed of and giving any explanation of the account.

(2) The meeting must be called by an advertisement, published in the *Gazette* and at least one English local daily newspaper —

(*a*) which must specify the time, place and object of the meeting;

(*b*) which must be published at least 30 days before the meeting; and

(*c*) a copy of which must be sent to the Official Receiver within 7 days after the publication of the advertisement.

(3) The liquidator must within 7 days after the meeting lodge with the Registrar of Companies and the Official Receiver a return of the holding of the meeting and of its date, with a copy of the account attached to that return.

(4) Any liquidator who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(5) The quorum at the meeting of the company and the creditors is 2 members and 2 creditors.

(6) If a quorum is not present at the meeting, the liquidator must (in lieu of the return mentioned in subsection (3)) lodge a return (with a copy of the account attached) that —

(*a*) the meeting was duly summoned; and

(*b*) no quorum was present at the meeting.

(7) Upon the lodgment of a return under subsection (6), the requirement to lodge a return under subsection (3) is deemed to have been complied with.

As to orders for release or dissolution

149.—(1) Where an order is made that the company be dissolved, the company is from the date of the order dissolved.

(2) The Court —

(*a*) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by a public accountant appointed by the Court;

(*b*) must 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*) must either grant or withhold the release of the liquidator accordingly.

(3) 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 the Court thinks just charging the liquidator with the consequences of any act or default which the liquidator may have done or made contrary to the liquidator’s duty.

(4) An order of the Court releasing the liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that the order was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, his or her release operates as a removal from office.

(6) Where the Court has made an order —

(*a*) that the liquidator be released; or

(*b*) that the liquidator be released and that the company be dissolved,

a copy of the order must, within 14 days after the making of the order, be lodged by the liquidator with the Registrar of Companies and with the Official Receiver, respectively, and a liquidator who defaults in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Subdivision (3) — Committees of inspection

Meetings to determine whether committee of inspection to be appointed

150.—(1) The liquidator may, and must if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining —

(*a*) whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator; and

(*b*) if they so require, who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories, the Court is to decide the difference and may make such order as the Court thinks fit.

Constitution and proceedings of committee of inspection

151.—(1) The committee of inspection must consist of creditors and contributories of the company, or persons holding —

(*a*) general powers of attorney from creditors or contributories; or

(*b*) special authorities from creditors or contributories authorising the persons named in those special authorities to act on such a committee,

being creditors, contributories or persons (as the case may be) 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.

(2) The committee of inspection may meet at such times and places as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he or she thinks necessary.

(3) The committee of inspection may act by a majority of its members present at a meeting, but must not act unless a majority of the committee is present.

(4) A member of the committee of inspection may resign by notice in writing signed by him or her and delivered to the liquidator.

(5) The office of a member of the committee of inspection becomes vacant if —

(*a*) the member becomes bankrupt;

(*b*) the member assigns his or her estate for the benefit of his or her creditors;

(*c*) the member makes an arrangement with his or her creditors under this Act; or

(*d*) the member is absent from 5 consecutive meetings of the committee without the leave of the other members of the committee who represent the creditors (where the member represents creditors) or the contributories (where the member represents contributories).

(6) A member of the committee of inspection may be removed by an ordinary resolution at a meeting of creditors (where the member represents creditors), or of contributories (where the member represents contributories), if notice of the meeting has been given at least 7 days before the date of the meeting, stating the object of the meeting.

(7) A vacancy in the committee of inspection may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).

(8) The liquidator may at any time of the liquidator's own motion, and must within 7 days after the request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made under subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in place of the person appointed under subsection (7).

(9) The continuing members of the committee of inspection, if not less than 2, may act despite any vacancy in the committee.

(10) In this section, "general power of attorney" includes a lasting power of attorney registered under the Mental Capacity Act (Cap. 177A).

Subdivision (4) — General powers of Court

Settlement of list of contributories and application of assets

152.—(1) As soon as possible after making a winding up order, the Court must settle a list of contributories and cause the assets of the company to be collected and applied in discharge of the liabilities of the company.

(2) After making a winding up order, the Court may rectify the register of members in all cases where rectification is required under this Part.

(3) Despite subsection (1), where it appears to the Court that it is not necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

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

(5) The list of contributories, when settled, is prima facie evidence of the liabilities of the persons named in the list as contributories.

Payment of debts due by contributory and extent to which set-off allowed, etc.

153.—(1) The Court may make an order directing any 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 the contributory or from the estate of the person whom the contributory represents, exclusive of any money payable by the contributory or that estate by virtue of any call under this Act or the Companies Act, and may —

(*a*) in the case of an unlimited company, allow the contributory to set off any money due to the contributory, or to the estate that the contributory represents, from the company on any independent dealing or contract, but not any money due to the contributory as a member of the company in respect of any dividend or profit;

(*b*) in the case of a limited company, make to any director whose liability is unlimited, or to the estate of that director, the like allowance; and

(*c*) in the case of any company, whether limited or unlimited, when all the creditors are paid in full, allow a contributory to set off any money due on any account to the contributory from the company against any subsequent call.

(2) The Court may, either before or after it has ascertained the sufficiency of the assets of the company —

(*a*) make calls on all or any of the contributories (for the time being on the list of contributories), to the extent of their liability, for payment of any money which the Court considers necessary —

(i) to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up; and

(ii) for the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

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

(4) All moneys and securities paid or delivered into any bank under this Division are subject in all respects to orders of the Court.

(5) An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money (if any) appearing under the order to be due or ordered to be paid is due, and all other pertinent matters stated in the order are taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager

154.—(1) The liquidator may apply to the Court to appoint a special manager of the estate or business of a company (called in this section a special manager), if the liquidator is satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager other than the liquidator.

(2) The Court 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 the special manager by the Court.

(3) A special manager —

(*a*) must give such security and account in such manner as the Court directs;

(*b*) is to receive such remuneration as is fixed by the Court;

(*c*) may at any time resign after giving not less than one month’s notice in writing to the liquidator of the special manager’s intention to resign; and

(*d*) may on cause shown be removed by the Court.

Claims of creditors and distribution of property

155.—(1) The Court may fix a date on or before which creditors are to prove their debts or claims, or after which those creditors are excluded from the benefit of any distribution made before those debts or claims are proved.

(2) The Court must adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to the surplus.

(3) The Court may, in the event the assets are insufficient to satisfy the liabilities, order the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.

Inspection of books and papers by creditors and contributories

156. The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to arrest absconding contributory, director or former director

157. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory or a director or former director of the company is about to leave Singapore or otherwise to abscond or to remove or conceal any of his or her property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may —

(*a*) cause the contributory, director or former director to be arrested; and

(*b*) cause the books and papers and movable personal property of the contributory, director or former director to be seized and safely kept until such time as the Court orders.

Delegation to liquidator of certain powers of Court

158.—(1) Subject to subsection (2), the Rules may provide for all or any of the powers and duties conferred and imposed on the Court by this Part or Part 9 in respect of —

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;

(*c*) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(*d*) the making of calls and the adjusting of the rights of contributories; and

(*e*) the fixing of a time within which debts and claims must be proved,

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

(2) The liquidator —

(*a*) must not, without the special leave of the Court, rectify the register of members; and

(*b*) must not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Powers of Court cumulative

159.—(1) Any powers conferred on the Court by this Act or the Companies Act are in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

(2) Subject to the Rules, an appeal from any order or decision made or given in the winding up of a company lies in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

Division 3 — Provisions applicable to voluntary winding up

Subdivision (1) — Preliminary

Circumstances in which company may be wound up voluntarily

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

(*a*) when the period (if any) fixed for the duration of the company by the constitution of the company expires or, where the constitution of the company provides that the company is to be dissolved on the occurrence of an event, when that event happens, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or

(*b*) if the company so resolves by special resolution.

(2) A company must —

(*a*) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar of Companies; and

(*b*) within 10 days after the passing of the resolution, give notice of the resolution in the *Gazette* and at least one English local daily newspaper.

(3) If the company fails to comply with subsection (2), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Provisional liquidator and commencement of voluntary winding up

161.—(1) Where the directors of a company have made and lodged with the Official Receiver a statutory declaration in the prescribed form, and have lodged a declaration in the prescribed form with the Registrar of Companies —

(*a*) that the company cannot by reason of its liabilities continue its business; and

(*b*) that meetings of the company and of its creditors have been summoned for a date within 30 days after the date of the declaration,

the directors must immediately appoint a licensed insolvency practitioner to be the provisional liquidator.

(2) Subject to section 171, a provisional liquidator has and may exercise all the functions and powers of a liquidator in a creditors' winding up, subject to such limitations and restrictions as may be prescribed by regulations.

(3) The appointment of a provisional liquidator under this section continues for 30 days after the date of the appointment of the provisional liquidator, or for such further period as the Official Receiver may allow in any particular case, or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this section, together with a copy of the statutory declaration lodged with the Official Receiver under subsection (1), must be advertised, within 14 days after the appointment of the provisional liquidator, in the *Gazette* and at least one English local daily newspaper.

(5) A provisional liquidator is entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(6) A voluntary winding up commences —

(*a*) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration mentioned in subsection (1) was lodged with the Registrar of Companies; or

(*b*) in any other case, at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up

162.—(1) The company must, starting on the commencement of the 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) Despite anything to the contrary in the constitution of the company, the corporate state and corporate powers of the company continue until the company 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 members made after the commencement of the winding up, are void.

Declaration of solvency

163.—(1) Where it is proposed to wind up a company voluntarily pursuant to a members' voluntary winding up, the directors of the company or, in the case of a company that has more than 2 directors, the majority of the directors must, 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, make a 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 must be attached to the declaration a statement of affairs of the company showing, in the prescribed form —

(*a*) the assets of the company and the total amount expected to be realised from those assets;

(*b*) the liabilities of the company; and

(*c*) the estimated expenses of the winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made has no effect for the purposes of this Act unless it is —

(*a*) made at the meeting of directors mentioned in subsection (1);

(*b*) made within 5 weeks immediately before the passing of the resolution for voluntary winding up; and

(*c*) lodged with the Registrar of Companies 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 director, who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) If the company is wound up pursuant to a resolution for voluntary winding up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it is to be presumed until the contrary is shown that the director did not have reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration.

Subdivision (2) — Provisions applicable only to members' voluntary winding up

Liquidator

164.—(1) The company in general meeting must appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to the liquidator or liquidators.

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

(3) The company may, in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator.

(4) No resolution under subsection (3) is effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator not be removed.

(5) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to the liquidator, and for that purpose a general meeting may be convened by any contributory, or, if there were 2 or more liquidators, by the continuing liquidators.

(6) The meeting must be held in the manner provided by this Act, or by the constitution of the company, or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

Duty of liquidator to call creditors' meeting, and alternative provisions as to annual meetings, in case of insolvency

165.—(1) If the liquidator is at any time of the 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 made under section 163(1), the liquidator must immediately summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.

(2) In summoning a meeting of creditors under subsection (1), the liquidator must —

(*a*) summon the meeting for a day not later than 30 days after the day on which the liquidator formed that opinion under subsection (1);

(*b*) send notices of the creditors' meeting to the creditors not less than 7 days before the day on which that meeting is to be held;

(*c*) cause notice of the creditors' meeting to be advertised in the *Gazette* and at least one English local daily newspaper; and

(*d*) during the period before the day on which the creditors' meeting is to be held, furnish the creditors free of charge

with such information concerning the affairs of the company as the creditors may reasonably require.

(3) A notice summoning a meeting under subsection (1) must draw the attention of the creditors to —

(*a*) the right conferred upon the creditors by subsection (2)(*d*); and

(*b*) the right conferred upon the creditors by subsection (5).

(4) The statement of the assets and liabilities of the company mentioned in subsection (1) must show —

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

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

(*c*) the securities held by the company's creditors respectively;

(*d*) the dates when the securities mentioned in paragraph (*c*) were respectively given; and

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

(5) The creditors may, at the meeting summoned under subsection (1), appoint a person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company in place of the liquidator appointed by the company.

(6) If the creditors appoint a person under subsection (5), the winding up is to proceed after the appointment as if the winding up were a creditors' voluntary winding up.

(7) Within 7 days after a meeting has been held under subsection (1), the liquidator or, if some other person has been appointed by the creditors to be the liquidator, the person so appointed must lodge with the Registrar of Companies and with the Official Receiver a notice in the prescribed form, and if default is made in complying with this subsection, the liquidator or the person so appointed (as the case may be) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(8) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a person to be the liquidator in place of the liquidator appointed by the company —

(*a*) the winding up is to proceed after the meeting as if the winding up were a creditors' voluntary winding up; but

(*b*) the liquidator is not required to summon an annual meeting of creditors at the end of the first year after the commencement of the winding up, if the meeting held under subsection (1) was held less than 3 months before the end of that year.

Subdivision (3) — Provisions applicable only to creditors' voluntary winding up

Meeting of creditors

166.—(1) The company must cause 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 of the company at which the resolution for voluntary winding up is to be proposed, and must cause the notices of the meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company must convene the meeting of the creditors at a time and place convenient to the majority in value of the creditors, and must —

(*a*) send notice of the meeting to the creditors at least 10 days before the date 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.

(3) The company must cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in the *Gazette* and at least one English local daily newspaper.

(4) The directors of the company must —

(*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 the creditors; and

(*b*) appoint one of their number to attend the meeting.

(5) The director appointed under subsection (4)(*b*), and the secretary, must attend the meeting of the creditors and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number, or the director appointed under subsection (4)(*b*), as the chairperson to preside at the meeting.

(7) The chairperson must determine at the meeting whether the meeting has been held at a time and place convenient to the majority in value of the creditors, and the chairperson's decision is final.

(8) If the chairperson decides that the meeting has not been held at a time and place convenient to that majority, the meeting lapses and a further meeting must be summoned by the company as soon as is practicable.

(9) If the meeting of the company is adjourned and the resolution for voluntary winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if the resolution had been passed immediately after the passing of the resolution for voluntary winding up.

(10) If default is made in complying with this section, the company and any officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000.

Liquidator

167.—(1) The company must, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors is to be liquidator, and if no person is nominated by the creditors, the person nominated by the company is to be liquidator.

(2) Despite subsection (1), where different persons are nominated, any director, member 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 company is to be 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 cease, except so far as the committee of inspection or, if there is no such committee, the creditors approve the continuance of those powers.

(5) If 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 filling the vacancy, a meeting of the creditors may be summoned by any 2 of their number.

Liquidator's right to request for statements of concurrence

168.—(1) The liquidator may require any director who has not made the statement of affairs mentioned in section 166(4) to submit a statement of concurrence verified by affidavit, stating that that director concurs in the statement of affairs.

(2) A statement of concurrence made under subsection (1) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence —

(*a*) is not in agreement with the persons making the statement of affairs;

(*b*) considers the statement of affairs to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring in the statement of affairs.

(3) Every person who makes a statement of concurrence under subsection (1) must submit the statement to the liquidator within 14 days after the request to submit the statement of concurrence, or within such extended time as the liquidator or the Court may specify.

Committee of inspection

169.—(1) The creditors at the meeting summoned under section 165(1) or 166(1) or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not, and if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons (but not more than 5) as the company thinks fit to act as members of the committee.

(2) Despite subsection (1) —

(*a*) the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection;

(*b*) if the creditors so resolve under paragraph (*a*), the persons mentioned in the resolution are not, unless the Court otherwise directs, qualified to act as members of the committee; and

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

(3) Subject to this section and the regulations, sections 150 and 151 relating to the proceedings of and vacancies in committees of inspection apply with respect to a committee of inspection appointed under this section.

Property and proceedings

170.—(1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up is, unless the Court otherwise orders, void.

(2) After the commencement of the winding up, no action or proceeding may be proceeded with or commenced against the

company except by the leave of the Court and subject to such terms as the Court may impose.

Subdivision (4) — Provisions applicable to every voluntary winding up

Powers of provisional liquidator prior to creditors' meeting

171.—(1) The powers conferred on a provisional liquidator by section 161 must not be exercised during the period before the holding of the meeting of the creditors under section 166, except with the sanction of the Court.

(2) Subsection (1) does not apply in relation to the power of the provisional liquidator —

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

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

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

(3) The provisional liquidator must attend the meeting of the creditors held under section 166 and must report to the meeting on any exercise by the provisional liquidator of his or her powers.

(4) Any provisional liquidator who, without reasonable excuse, fails to comply with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Distribution of property of company

172. Subject to the provisions of this Act as to preferential payments, the property of a company must, on its winding up, be applied pari passu in satisfaction of its liabilities and, subject to that application, must, unless the constitution of the company otherwise

provides, be distributed among the members according to their rights and interests in the company.

Appointment of liquidator

173. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

Removal of liquidator

174. The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Review of liquidator's remuneration

175. Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final and conclusive.

Act of liquidator valid, etc.

176.—(1) The acts of a liquidator are valid despite any defects that may afterwards be discovered in the liquidator's appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, despite any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator is protected and indemnified in so doing, despite any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this section, a disposition of property is to be taken as including a payment of money.

Powers and duties of liquidator

177.—(1) The liquidator may —

(*a*) in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by section 144(1)(*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) to a liquidator in a winding up by the Court;

(*b*) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(*c*) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories is prima facie evidence of the liability of the persons named in the list to be contributories;

(*d*) exercise the power of the Court 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 the liquidator thinks fit.

(2) The liquidator must pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than 2.

Power of liquidator to accept shares, etc., as consideration for sale of property of company

178.—(1) Where it is proposed that the whole or part of the business or property of a company (called in this section the company) be transferred or sold to another corporation (called in this section the corporation), the liquidator of the company may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement —

(*a*) receive in compensation or part compensation for the transfer or sale, any shares, debentures, policies or other like interests in the corporation for distribution among the members of the company; or

(*b*) enter into any other arrangement under which the members of the company may, in lieu of or in addition to receiving cash, shares, debentures, policies or other like interests in the corporation, participate in the profits of or receive any other benefit from the corporation.

(2) Any transfer, sale or arrangement mentioned in subsection (1) is binding on the members of the company.

(3) If any member of the company expresses the member's dissent to the resolution mentioned in subsection (1) in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, the member may require the liquidator either —

(*a*) to abstain from carrying the resolution into effect; or

(*b*) to purchase the member's interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

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

(5) A special resolution is not invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section, the Arbitration Act (Cap. 10) applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party, and the appointment of an arbitrator may be made under the hand of the

liquidator or, if there is more than one liquidator, under the hands of any 2 or more of the liquidators.

(7) The Court may give any directions necessary for the initiation and conduct of an arbitration under this section, and such direction is binding on the parties.

(8) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section must not be exercised except with the approval of the Court or the committee of inspection.

Annual meeting of members and creditors

179.—(1) If the winding up continues for more than one year, the liquidator must —

(*a*) summon a general meeting of the company (in the case of a members' voluntary winding up), or of the company and the creditors (in the case of a creditors' voluntary winding up), at the end of the first year after the commencement of the winding up and at the end of, or not more than 3 months after the end of, each succeeding year; and

(*b*) lay before the meeting an account of the liquidator's acts and dealings, and of the conduct of the winding up during the preceding year.

(2) The liquidator must cause the notices of the meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) Every liquidator who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Final account and dissolution

180.—(1) As soon as the affairs of the company are fully wound up, the liquidator must —

(*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*) upon doing so, 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, for the purpose of laying before the meeting the account and giving any explanation of the account.

(2) The meeting must be called by an advertisement —

(*a*) which must be published in the *Gazette* and at least one English local daily newspaper;

(*b*) which must specify the time, place and object of the meeting;

(*c*) which must be published at least 30 days before the meeting; and

(*d*) a copy of which must be sent to the Official Receiver within 7 days after the publication of the advertisement.

(3) The liquidator must within 7 days after the meeting lodge with the Registrar of Companies and the Official Receiver —

(*a*) a return of the holding and date of the meeting, with a copy of the account attached to the return; or

(*b*) if a quorum is not present at the meeting, a return (with account attached) that the meeting was duly summoned and that no quorum was present at the meeting.

(4) Any liquidator who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(5) The quorum at a meeting of the company is 2 members and at a meeting of the company and the creditors is 2 members and 2 creditors.

(6) On the expiration of 3 months after the lodging of the return with the Registrar of Companies and with the Official Receiver, the company is dissolved.

(7) Despite subsection (6), the Court may, on the application of the liquidator or of any other person who appears to the Court to be

interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(8) The person on whose application an order of the Court under this section is made must, within 14 days after the making of the order, lodge with the Registrar of Companies and with the Official Receiver a copy of the order, and if the person fails to do so, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(9) Any liquidator who fails to call a meeting as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Application to Court to have questions determined or powers exercised

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

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

(*b*) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power is just and beneficial, may —

(*a*) accede wholly or partially to any such application on such terms and conditions as the Court thinks fit; or

(*b*) make such other order on the application as the Court thinks just.

No liquidator appointed or nominated by company

182.—(1) Where it is proposed to wind up a company voluntarily, and no liquidator or provisional liquidator has been appointed or nominated by the company, the powers of the directors must not be exercised, except with the sanction of the Court or, in the case of a creditors' voluntary winding up, so far as may be necessary to secure compliance with section 166.

(2) Subsection (1) does not apply in relation to the powers of the directors —

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

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

(3) Any director who, without reasonable excuse, fails to comply with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty.

Costs

183. All proper costs, charges and expenses of and incidental to the winding up, including the remuneration of the liquidator, are payable out of the assets of the company in accordance with section 203.

Limitation on right to wind up voluntarily

184. Where an application has been made to the Court to wind up a company on the ground that it is unable to pay its debts, the company must not, without the leave of the Court, resolve that it be wound up voluntarily.

Summoning, proof of notice, and quorum of meetings

185.—(1) Unless provided otherwise under this Act, the liquidator or other person summoning a meeting of creditors, meeting of contributories, or meeting of creditors and contributories, under this Division must —

(*a*) summon such meeting by causing notice of the time and place of the meeting to be advertised, at least 7 days before the date of the meeting, in the *Gazette* and at least one English local daily newspaper; and

(*b*) not less than 7 days before the day appointed for the meeting, send, to every person appearing by the company's

books to be a creditor of the company, notice of the meeting of creditors or meeting of creditors and contributories, and, to every person appearing by the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories or meeting of creditors and contributories.

(2) The notice to each creditor must be sent to the address given in the creditor's proof or, if the creditor has not proved, to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting.

(3) The notice to each contributory must be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(4) This section does not apply to meetings under section 165, 166 or 180.

(5) An affidavit in the prescribed form by the liquidator or the liquidator's solicitor or the clerk of either of such persons, that the notice of any meeting has been duly posted, is sufficient evidence of such notice having been duly sent to the person to whom the notice was addressed.

(6) A meeting must not act for any purpose except the election of a chairperson, the proving of debts and the adjournment of the meeting unless there are present or represented at the meeting —

(*a*) in the case of a meeting of creditors, at least 3 creditors entitled to vote;

(*b*) in the case of a meeting of contributories, at least 3 contributories; or

(*c*) all the creditors entitled to vote or all the contributories, if the number of the creditors entitled to vote or the number of contributories (as the case may be) does not exceed 3.

(7) If within half an hour after the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting must be adjourned to the same day in the following week at

the same time and place, or to such other day as the chairperson may appoint, being not earlier than the 8th day, and not later than the 21st day, after the day on which the meeting was adjourned.

(8) If within half an hour after the time appointed for the adjourned meeting a quorum of creditors or contributories is not present or represented, the adjourned meeting must not be further adjourned.

(9) The list of creditors assembled to be used at every meeting must be in the prescribed form.

Division 4 — Provisions applicable to every mode of winding up

Subdivision (1) — General

Power to stay or terminate winding up

186.—(1) At any time during the winding up of a company, the Court may, on the application of the liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed or terminated, make an order —

(*a*) staying the proceedings either altogether or for a limited time, on such terms and conditions as the Court thinks fit; or

(*b*) terminating the winding up on a day specified in the order.

(2) On any such application, the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters that are in the liquidator's opinion relevant.

(3) Where the Court has made an order terminating the winding up, the Court may give such directions as the Court thinks fit for the resumption of the management and control of the company by the officers of the company, including directions for the convening of a general meeting of members of the company to elect directors of the company to take office upon the termination of the winding up.

(4) Where an order is made under this section, the person on whose application the order is made must lodge a copy of the order with the Registrar of Companies and the Official Receiver, within 14 days after the making of the order.

(5) Any person who fails to comply with subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Arrangement when binding on creditors

187.—(1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors is, subject to the right of appeal under this section, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors, every creditor for under $500 being reckoned in value only.

(2) A creditor must be accounted a creditor for value for such sum as upon an account fairly stated appears to be the balance due to the creditor, after allowing —

(*a*) the value of security or liens held by the creditor; and

(*b*) the amount of any debt or set-off owing by the creditor to the company.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) Any creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court against the arrangement, and the Court may upon the appeal, as it thinks just, amend, vary or confirm the arrangement.

Books to be kept by liquidator, control of Court over liquidators, and delivery of property to liquidator

188.—(1) Every liquidator must keep proper books in which the liquidator must cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his or her agent inspect the books.

(2) The Court must take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform the liquidator’s duties and observe the prescribed requirements or the requirements of the

Court, or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard to the performance of the liquidator's duties, the Court must inquire into the matter and take such action as the Court thinks fit.

(3) The Registrar of Companies or the Official Receiver may report to the Court any matter which in his or her 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 by the misfeasance, neglect or omission and make such other order as the Court thinks fit.

(4) The Court may —

(*a*) at any time require any liquidator to answer any inquiry in relation to the winding up;

(*b*) examine the liquidator or any other person on oath concerning the winding up; and

(*c*) direct an investigation to be made of the books and vouchers of the liquidator.

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator, immediately or within such time as the Court directs, any money, property, books and papers in the hands of the contributory, trustee, receiver, banker, agent or officer to which the company is prima facie entitled.

Powers of Official Receiver where no committee of inspection

189.—(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 or her 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.

Appeal against decision of liquidator

190. Any person aggrieved by any act or decision of the liquidator may apply to the Court, which may confirm, reverse or modify the act or decision complained of and make such order as the Court thinks just.

Notice of appointment and address of liquidator

191.—(1) A liquidator must —

(*a*) within 14 days after the liquidator's appointment, lodge with the Registrar of Companies and with the Official Receiver notice in the prescribed form of the liquidator's appointment and of the address of the liquidator's office; and

(*b*) within 14 days after any change in the address of the liquidator's office, lodge with the Registrar of Companies and with the Official Receiver notice in the prescribed form of the change.

(2) Service of any document by leaving it at, or sending it by post addressed to, the address of the liquidator's office given in the most recent notice lodged by the liquidator with the Registrar of Companies under subsection (1)(*a*) or (*b*) is deemed to be good service upon the liquidator and upon the company.

(3) A liquidator must, within 14 days after the liquidator's resignation or removal from office, lodge with the Registrar of Companies and with the Official Receiver a notice in the prescribed form of the liquidator's resignation or removal from office.

(4) Any liquidator who fails to comply with subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Liquidator's accounts

192.—(1) Every liquidator must lodge with the Official Receiver, in the prescribed form and verified by statutory declaration, an account of the liquidator's receipts and payments and a statement of the position in the winding up —

(*a*) within one month after the expiration of each of the following periods:

(i) a period of 12 months after the date of the liquidator's appointment;

(ii) every subsequent period of 12 months;

(*b*) within one month after the liquidator ceases to act as liquidator; and

(*c*) immediately after obtaining an order of release,

and any liquidator who fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(2) Every liquidator must, within 7 days after lodging the account and statement mentioned in subsection (1), also lodge with the Registrar of Companies a notice in the prescribed form of the lodgment of that account and statement, and any liquidator who fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(3) The Official Receiver may cause the account of any liquidation to be audited by a public accountant, and for the purpose of the audit —

(*a*) the liquidator must furnish the public accountant with such vouchers and information as the public accountant requires; and

(*b*) the public accountant may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) A liquidator must keep a copy of the account or, if audited, a copy of the audited account, and that copy must be open to the inspection of any creditor or any person interested at the office of the liquidator.

(5) The liquidator must —

(*a*) give notice that the account has been made up to every creditor and contributory, when next forwarding any report, notice of meeting, notice of call or dividend; and

(*b*) in such notice, inform the creditors and contributories at what address and between what hours the account may be inspected.

(6) The costs of an audit under this section must be fixed by the Official Receiver and are part of the expenses of winding up.

Liquidator to make good defaults

193.—(1) If any liquidator, who defaults in lodging or making any application, return, account or other document, or in giving any notice, that the liquidator is by law required to lodge, make or give, fails to make good the default within 14 days after the service on the liquidator of a notice requiring the liquidator to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application must be borne by the liquidator.

(3) Nothing in subsection (1) prejudices the operation of any written law imposing penalties on a liquidator in respect of any default mentioned in that subsection.

Notification that company is in liquidation

194.—(1) Where a company is being wound up —

(*a*) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of the company, 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; and

(*b*) every Internet website of the company on or in which the name of the company appears,

must have the words “in liquidation” added after the name of the company where it first appears in that document or Internet website.

(2) A provisional liquidator appointed over a company must comply with subsection (1), except that the words “in provisional liquidation” must be added after the name of the company instead of the words “in liquidation”.

(3) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty:

(*a*) the company;

(*b*) each of the following persons who knowingly and wilfully authorises or permits the default:

(i) an officer of the company;

(ii) a liquidator of the company;

(iii) a provisional liquidator of the company;

(iv) a receiver or manager of the property of the company.

Books and papers of company and liquidator

195.—(1) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in those books and papers.

(2) Except as provided in subsection (3), when a company has been wound up, the liquidator must retain the books and papers mentioned in subsection (1) for a period of 5 years after the date of dissolution of the company, and at the expiration of that period may destroy the books and papers.

(3) Despite subsection (2), when a company has been wound up by the Court, the books and papers mentioned in subsection (1) may be destroyed, within a period of 5 years after the date of dissolution of the company, in accordance with the directions of the Court.

(4) If any book or paper of a company has been destroyed in accordance with this section, the company and the liquidator are not responsible for that book or paper not being available to any person claiming to be interested in that book or paper.

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

Investment of surplus funds on general account

196.—(1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection or (if there is no committee of inspection) of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator may, if so directed in writing by the committee of inspection or (if there is no committee of inspection) on the liquidator's own motion, unless the Court on application by any creditor thinks fit to direct otherwise and so orders —

(*a*) invest in securities issued by the Government; or

(*b*) place on deposit at interest with any bank,

the whole or any part of the excess, and any interest received in respect of the money invested or deposited forms part of the assets of the company.

(2) Whenever any part of the money so invested or deposited is, in the opinion of the committee of inspection or (if there is no committee of inspection) of the liquidator, required to answer any demands in respect of the company's estate, the liquidator may, if so directed by the committee of inspection or (if there is no committee of inspection) on the liquidator's own motion, arrange for the sale or realisation of such part of those securities, or the withdrawal of the whole or such part of the deposit, as is necessary.

Unclaimed assets to be paid to Official Receiver

197.—(1) Where a liquidator has in the liquidator's hands or under the liquidator's control —

(*a*) any unclaimed dividend or other moneys that have remained unclaimed for more than 6 months after the date on which the dividend or other moneys became payable; or

(*b*) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,

and the moneys remain unclaimed after the expiration of 30 days after the date the notice mentioned in subsection (2) is given, the liquidator must immediately pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account, and is entitled to the prescribed certificate of receipt for the moneys so paid, and that certificate is an effectual discharge to the liquidator in respect of the moneys so paid.

(2) A liquidator who has in the liquidator's hands or under the liquidator's control any moneys mentioned in subsection (1) must give notice, of the intended payment to the Official Receiver of those moneys if those moneys remain unclaimed after the expiration of 30 days after the date the notice is given, to the person entitled to those moneys by —

(*a*) sending a copy of the notice to that person at that person's last known address; and

(*b*) if there is reason to believe that the copy of the notice mentioned in paragraph (*a*) may not be effective in bringing the intended payment to that person's attention, an advertisement published in at least one English local daily newspaper.

(3) The Court may, at any time on the application of the Official Receiver —

(*a*) order any liquidator to submit to the Court an account, verified by affidavit, of any unclaimed or undistributed funds, dividends or other moneys in the liquidator's hands or under the liquidator's control;

(*b*) direct an audit of those moneys; and

(*c*) direct the liquidator to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(4) The interest arising from the investment of the moneys standing to the credit of the Companies Liquidation Account must be paid into the Consolidated Fund.

(5) For the purposes of this section —

(*a*) the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the company; and

(*b*) the provisions of this Act with respect to the discovery and realisation of the property of the company, with such adaptations as are prescribed, apply to proceedings under this section.

(6) This section does not, except as expressly declared in this Act, deprive any person of any other right or remedy to which the person is entitled against the liquidator or any other person.

(7) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver, upon being satisfied that the claimant is the owner of the money —

(*a*) must authorise payment of the money to be made to the claimant out of that Account; or

(*b*) if the money has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to the claimant out of moneys made available by Parliament for the purpose.

(8) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made under subsection (7) may appeal to the Court, which may confirm, disallow or vary the decision.

(9) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person is not entitled to any payment out of the Companies Liquidation Account or out of the Consolidated Fund, but may have recourse against the claimant to whom the unclaimed moneys have been paid.

(10) Any unclaimed moneys paid to the credit of the Companies Liquidation Account, to the extent to which the unclaimed moneys have not been under this section paid out of that Account, must, on the expiration of 7 years after the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

Outstanding assets of company wound up on grounds of national security or interest

198. Despite any written law or rule of law to the contrary, upon a company being wound up under section 125(1)(*n*) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the company remaining, after payment of its debts and liabilities and the costs, charges and expenses of the winding up, be paid into the Consolidated Fund.

Expenses of winding up where assets insufficient

199.—(1) Unless expressly directed to do so by the Official Receiver, a liquidator is not liable to incur any expense 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 —

(*a*) the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended; and

(*b*) if the Official Receiver so directs, the creditor or contributory gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

(3) Where the Official Receiver is the liquidator, the Official Receiver is not liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(4) Where the Official Receiver is the liquidator, the Official Receiver may, on the application of a creditor or a contributory, incur a particular expense on the condition that —

(*a*) the creditor or contributory indemnifies the Official Receiver in respect of the recovery of the amount expended; and

(*b*) if the Official Receiver so directs, the creditor or contributory gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

Resolutions passed at adjourned meetings of creditors and contributories

200. Subject to section 166(9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution is for all purposes treated as having been passed on the date on which it was in fact passed, and not on any earlier date.

Meetings to ascertain wishes of creditors or contributories

201.—(1) The Court may —

(*a*) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to the Court by any sufficient evidence;

(*b*) if the Court 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

(*c*) appoint a person to act as chairperson of any such meeting and to report the result of that meeting to the Court.

(2) In the case of creditors, regard must be had to the value of each creditor's debt.

(3) In the case of contributories, regard must be had to the number of votes conferred on each contributory by the Companies Act or the constitution of the company.

Special commission for receiving evidence

202.—(1) District Judges are commissioners for the purpose of taking evidence under this Part and Parts 9, 10 and 11, and the Court may refer the whole or any part of the examination of any witnesses

under this Part or Part 9, 10 or 11 to any person appointed commissioner by this section.

(2) Every commissioner, in addition to any powers which the commissioner might lawfully exercise as a District Judge, has in the matter referred to him or her the same powers as the Court of —

(*a*) summoning and examining witnesses;

(*b*) requiring the production or delivery of documents;

(*c*) punishing defaults by witnesses; and

(*d*) allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court, the taking of evidence by commissioners must be in open court and must be open to the public.

(4) The examination so taken must be returned or reported to the Court in such manner as the Court directs.

Priority of debts

203.—(1) Subject to the provisions of this Act, in a winding up there must be paid in priority to all other unsecured debts —

(*a*) first, the costs and expenses of the winding up incurred by the Official Receiver as the liquidator of the company, including the costs, expenses and remuneration of any licensed insolvency practitioner appointed by the Official Receiver under section 134(*f*) to act as liquidator in the place of the Official Receiver;

(*b*) second, any other costs and expenses of the winding up, including the remuneration of the liquidator (apart from any remuneration mentioned in paragraph (*a*)) and the costs of any audit carried out under section 192;

(*c*) third, the costs of the applicant for the winding up order payable under section 127;

(*d*) fourth, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of

employment or any award or agreement regulating conditions of employment of any employee;

(*e*) fifth, subject to subsection (2), the amount due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or any award or agreement that regulates conditions of employment, whether such amount becomes payable before, on or after the commencement of the winding up;

(*f*) sixth, all amounts due in respect of work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up;

(*g*) seventh, all amounts due in respect of contributions payable, during a period of 12 consecutive months commencing not earlier than 12 months before and ending not later than 12 months after the commencement of the winding up, by the company as the employer of any person, under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act (Cap. 134);

(*h*) eighth, subject to subsection (2), all remuneration payable to any employee in respect of vacation leave or, in the case of the employee's death, to any other person in the employee's right, accrued in respect of any period before, on or after the commencement of the winding up; and

(*i*) ninth, the amount of all tax assessed, and all goods and services tax due, under any written law before the commencement of the winding up, and all tax assessed under any written law at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(*d*), (*e*) and (*h*) must not exceed such amount as may be prescribed by the Minister by order in the *Gazette*.

(3) In subsection (1)(*d*), (*e*), (*g*) and (*h*) and this subsection —

"employee" means an individual who has entered into or works under a contract of service with an employer, and includes a subcontractor of labour;

"ex gratia payment" means an amount payable to an employee on the winding up of a company or on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement;

"retrenchment benefit" means an amount payable to an employee on the winding up of a company or on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement, or if no amount is so ascertainable, such amount as is determined by the Commissioner for Labour or by an Employment Claims Tribunal constituted under section 4 of the State Courts Act (Cap. 321);

"wages or salary" includes —

(*a*) all arrears of money due to a subcontractor of labour;

(*b*) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, whether such amount becomes payable before, on or after the commencement of the winding up; and

(*c*) any amount payable to an employee, on termination of the employee's employment, as a gratuity under any contract of employment or any award or agreement that regulates the conditions of the

employee's employment, whether such amount becomes payable before, on or after the commencement of the winding up.

(4) The debts in each class specified in subsection (1) rank in the order specified in that subsection, but as between debts of the same class rank equally between themselves, and must be paid in full, unless the property of the company is insufficient to meet them, in which case the debts of the same class abate in equal proportions between themselves.

(5) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced, in a winding up —

(*a*) has a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment; and

(*b*) has the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(6) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1)(*a*), (*b*), (*c*), (*d*), (*e*), (*g*) and (*h*) and any amount payable in priority by virtue of subsection (5), those debts —

(*a*) have priority over the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge); and

(*b*) must be paid accordingly out of any property comprised in or subject to that charge.

(7) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (whether before, on or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the

company or the liquidator from the insurer, the amount must, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred, to the extent necessary to discharge that liability or any part of that liability remaining undischarged, in priority to all payments in respect of the debts mentioned in subsection (1).

(8) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (7) limits the rights of the third party in respect of the balance.

(9) Subsections (7) and (8) have effect despite any agreement to the contrary entered into after 29 December 1967.

(10) Despite anything in subsection (1) —

(*a*) paragraph (*f*) of that subsection does not apply in relation to the winding up of a company in any case where —

(i) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company, and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled to that right; or

(ii) the company has entered into a contract with an insurer in respect of any liability under any law relating to work injury compensation; and

(*b*) where a company has given security for the payment or repayment of any amount to which paragraph (*i*) of that subsection relates, that paragraph applies only in relation to the balance remaining due after deducting from that amount the net amount realised from such security.

Funding by creditors

204.—(1) Where in any winding up —

(*a*) assets have been recovered under an indemnity for costs of litigation given by certain creditors;

(*b*) assets have been protected or preserved by the payment of moneys or the giving of an indemnity by certain creditors; or

(*c*) expenses in relation to which a creditor has indemnified a liquidator have been recovered,

the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered, with a view to giving those creditors an advantage over others in consideration of the risks run by those creditors in giving those indemnities or paying those moneys.

(2) Any creditor may apply to the Court for an order under subsection (3) prior to —

(*a*) giving an indemnity for costs of litigation for recovering any assets;

(*b*) paying any moneys or giving an indemnity to protect or preserve any assets; or

(*c*) indemnifying a liquidator in relation to the liquidator's expenses.

(3) On an application by a creditor under subsection (2), the Court may, for the purpose of giving the creditor an advantage over others in consideration of the risks to be run by that creditor in giving the indemnity or payment for the purposes mentioned in that subsection, grant an order with respect to the distribution of —

(*a*) the assets mentioned in subsection (2)(*a*) that may be successfully recovered;

(*b*) the assets mentioned in subsection (2)(*b*) that may be successfully protected or preserved; or

(*c*) the amount of expenses mentioned in subsection (2)(*c*) that may be successfully recovered.

Subdivision (2) — Effect on other transactions

Transfer or assignment of company's property to trustees

205.—(1) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors made before the commencement of the winding up is void.

(2) Subsection (1) does not apply to any transfer or assignment of a company's property —

(*a*) pursuant to the terms of a compromise or an arrangement proposed by the company under section 210 of the Companies Act or section 71, that is approved by the creditors; or

(*b*) by a judicial manager while the company is under judicial management.

Restriction of rights of creditor as to execution or attachment

206.—(1) Where a creditor has issued execution against the goods or land of a company, or has attached any debt due to the company, and the company is subsequently wound up, the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator, unless the creditor has completed the execution or attachment before the date of the commencement of the winding up, but —

(*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice is for the purposes of this section substituted for the date of the commencement of the winding up;

(*b*) a person, who purchases in good faith under a sale by the bailiff any goods of the company on which an execution has been levied, acquires in all cases a good title to the goods against the liquidator; and

(*c*) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section —

(*a*) an execution against goods is completed by seizure and sale;

(*b*) an attachment of a debt is completed by receipt of the debt; and

(*c*) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

(3) For the purposes of this section and section 207 —

"bailiff" includes any officer charged with the execution of any writ or other process;

"goods" includes all chattels personal.

Duties of bailiff as to goods taken in execution

207.—(1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale of the goods or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that —

(*a*) a provisional liquidator has been appointed;

(*b*) a winding up order has been made; or

(*c*) a resolution for voluntary winding up has been passed,

the bailiff must, if required by the liquidator, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but —

(*d*) the costs of the execution are a first charge on the goods or moneys so delivered; and

(*e*) the liquidator may sell the goods, or a sufficient part of the goods, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding $100 the goods of a company are sold or money is paid in order to avoid sale —

(*a*) the bailiff must deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days; and

(*b*) if within that time notice is served on the bailiff of an application for the winding up of the company having been made, or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up, and an order is made or a resolution is passed for the winding up, the bailiff must pay the balance to the liquidator, who is entitled to retain the balance as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Subdivision (3) — Dissolution

Power of Court to declare dissolution of company void

208.—(1) Where a company has been dissolved, the Court may at any time within 2 years after the date of dissolution, on the application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and upon the making of that order, such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made must, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar of Companies and with the Official Receiver a copy of the order.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Early dissolution of company administered by Official Receiver when Official Receiver is liquidator

209.—(1) This section applies where —

(*a*) a company is being wound up;

(*b*) the Official Receiver is acting as liquidator; and

(*c*) the Official Receiver has reasonable cause to believe that —

(i) the realisable assets of the company are insufficient to cover the expenses of the winding up; and

(ii) the affairs of the company do not require any further investigation.

(2) Where this section applies, the Official Receiver may give a notice that, at the expiration of 30 days after the date of that notice, the name of the company mentioned in that notice will be struck off the register by the Registrar of Companies, and the company will be dissolved, unless —

(*a*) action is taken in accordance with subsection (6) for the appointment of a liquidator other than the Official Receiver for the purposes of continuing the liquidation; or

(*b*) an order is made under section 211(4) that the name of the company not be struck off the register and that the company not be dissolved.

(3) Subject to subsections (4) and (5), a notice under subsection (2) must —

(*a*) be given to —

(i) all the creditors who have filed proofs of debt, and whose proofs have not been rejected;

(ii) every person who, to the knowledge of the Official Receiver, claims to be a creditor of the company, and has not filed a proof of debt;

(iii) every person mentioned in the statement of affairs as a creditor who has not filed a proof of debt;

(iv) any receiver or manager of the company; and

(v) all the contributories of the company; and

(*b*) be advertised in at least one English local daily newspaper.

(4) The Official Receiver may apply to the Court for an order that the notice under subsection (2) need not be given to the persons mentioned in subsection (3)(*a*).

(5) The Court must not make an order under subsection (4) unless the Court is satisfied that the cost of giving the notice under subsection (2) to the persons mentioned in subsection (3)(*a*) will be excessive, having regard to —

(*a*) the realisable assets of the company; and

(*b*) the likelihood that the advertisement mentioned in subsection (3)(*b*) will be sufficient to bring the notice to the attention of the persons mentioned in subsection (3)(*a*).

(6) The Official Receiver must allow any creditor, contributory or receiver or manager mentioned in subsection (3)(*a*) to take any necessary action, before the expiry of the period of 30 days after the date of the notice mentioned in subsection (2), for the appointment of a liquidator other than the Official Receiver for the purposes of continuing the liquidation.

(7) Upon the giving of the notice under subsection (2), the Official Receiver (subject to any order given under section 210) ceases to be required to perform any duty imposed on the Official Receiver in relation to the company, its creditors or contributories by virtue of any provision of this Act, except for any duty under section 212 or 213.

(8) At the expiration of the period of 30 days mentioned in subsection (2), the Official Receiver may lodge with the Registrar of Companies a notice to strike the name of the company off the register, unless —

(*a*) action is taken in accordance with subsection (6) for the appointment of a liquidator other than the Official Receiver for the purposes of continuing the liquidation; or

(*b*) an order is made under section 211(4) that the name of the company not be struck off the register and that the company not be dissolved.

(9) Upon receiving the notice mentioned in subsection (8), the Registrar of Companies must publish a notice of the striking off of the company in the *Gazette*.

(10) On the publication in the *Gazette* of the notice mentioned in subsection (9) —

(*a*) the company is dissolved; but

(*b*) the liability, if any, of every officer and member of the company continues and may be enforced as if the company had not been dissolved.

(11) In this section and sections 210 and 211, "receiver or manager" means —

(*a*) a receiver or manager of the whole, or substantially the whole, of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(*b*) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

Early dissolution of company administered by liquidator other than Official Receiver

210.—(1) This section applies where a liquidator of a company (other than the Official Receiver) has reasonable cause to believe that —

(*a*) the realisable assets of the company are insufficient to cover the expenses of the winding up; and

(*b*) the affairs of the company do not require any further investigation.

(2) Where this section applies, the liquidator may, after obtaining the written consent of the Official Receiver, give a notice that, at the

expiration of 30 days after the date of that notice, the name of the company mentioned in that notice will be struck off the register by the Registrar of Companies, and the company will be dissolved, unless —

(*a*) action is taken in accordance with subsection (6) for the appointment of a replacement liquidator for the purposes of continuing the liquidation; or

(*b*) an order is made under section 211(4) that the name of the company not be struck off the register and that the company not be dissolved.

(3) Subject to subsections (4) and (5), a notice under subsection (2) must —

(*a*) be given to —

(i) all the creditors who have filed proofs of debt, and whose proofs have not been rejected;

(ii) every person who, to the knowledge of the liquidator, claims to be a creditor of the company, and has not filed a proof of debt;

(iii) every person mentioned in the statement of affairs as a creditor who has not filed a proof of debt;

(iv) any receiver or manager of the company; and

(v) all the contributories of the company; and

(*b*) be advertised in at least one English local daily newspaper.

(4) The liquidator may, with the written consent of the Official Receiver, apply to the Court for an order that the notice under subsection (2) need not be given to the persons mentioned in subsection (3)(*a*).

(5) The Court must not make an order under subsection (4) unless the Court is satisfied that the cost of giving the notice under subsection (2) to the persons mentioned in subsection (3)(*a*) will be excessive, having regard to —

(*a*) the realisable assets of the company; and

(*b*) the likelihood that the advertisement mentioned in subsection (3)(*b*) will be sufficient to bring the notice to the attention of the persons mentioned in subsection (3)(*a*).

(6) The liquidator must allow any creditor, contributory or receiver or manager mentioned in subsection (3)(*a*) to take any necessary action, before the expiry of the period of 30 days after the date of the notice mentioned in subsection (2), for the appointment of a replacement liquidator for the purposes of continuing the liquidation.

(7) Upon the giving of the notice under subsection (2), the liquidator (subject to any order given under section 211) ceases to be required to perform any duty imposed on the liquidator in relation to the company, its creditors or contributories by virtue of any provision of this Act.

(8) At the expiration of the period of 30 days mentioned in subsection (2), the liquidator may lodge with the Registrar of Companies a notice to strike the name of the company off the register, unless —

(*a*) action is taken in accordance with subsection (6) for the appointment of a replacement liquidator for the purposes of continuing the liquidation; or

(*b*) an order is made under section 211(4) that the name of the company not be struck off the register and that the company not be dissolved.

(9) Upon receiving the notice mentioned in subsection (8), the Registrar of Companies must publish a notice of the striking off of the company in the *Gazette*.

(10) On the publication in the *Gazette* of the notice mentioned in subsection (9) —

(*a*) the company is dissolved; but

(*b*) the liability, if any, of every officer and member of the company continues and may be enforced as if the company had not been dissolved.

Application for order in early dissolution of company administered by Official Receiver or liquidator

211.—(1) Where a notice has been given under section 209(2) or 210(2), any creditor or contributory of the company, any receiver or manager of the company, or any other person, may apply to the Court for an order under this section.

(2) The grounds on which an application under subsection (1) may be made are that —

(*a*) the realisable assets of the company are sufficient to cover the expenses of the winding up;

(*b*) the affairs of the company require further investigation; or

(*c*) the early dissolution of the company is inappropriate for any other reason.

(3) The Official Receiver or the liquidator (as the case may be) may apply to the Court for an order in relation to any matter arising after the giving of the notice under section 209(2) or 210(2).

(4) On an application under subsection (1) or (3), the Court may make such order as the Court thinks just, including an order —

(*a*) that the name of the company not be struck off the register and the company not be dissolved, and enabling the winding up of the company to proceed as if no notice had been given under section 209(2) or 210(2); or

(*b*) deferring the date on which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) Any person on whose application an order is made under this section must, within 7 days after the making of the order, deliver to the Official Receiver (if the Official Receiver is not the applicant), and to the Registrar of Companies for registration, a copy of the order.

(6) Any person who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Official Receiver to act as representative of defunct company in certain events

212.—(1) Where, after a company has been dissolved, it is proved to the satisfaction of the Official Receiver that —

(*a*) the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to any dealing, transaction or matter; and

(*b*) in order to carry out, complete or give effect to that dealing, transaction or matter, an act that is purely administrative and not discretionary should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

the Official Receiver may, acting as a representative of the company or its liquidator under this section, do or cause to be done that act.

(2) The Official Receiver may execute or sign any relevant instrument or document, acting as a representative of the company or its liquidator, adding a memorandum stating that the Official Receiver has done so under this section, and such execution or signature has the same force, validity and effect as if the company, if still existing, had duly executed such instrument or document.

Outstanding assets of defunct company to vest in Official Receiver

213.—(1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Singapore, which was vested in the company or to which the company was entitled, or over which the company had a disposing power at the time the company was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property (except called and uncalled capital), for the purposes of sections 214, 215 and 216 and despite any written law or rule of law to the contrary, by the operation of this section, is and becomes vested in the Official Receiver for all the estate and legal or equitable interest in such property of the company or its liquidator at the date the company

was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect of such property.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, that claim, right or remedy may be made, exercised or availed of by the Official Receiver for the purposes of this section, without any such approval or concurrence.

Disposal of outstanding interests in property

214.—(1) Upon proof to the satisfaction of the Official Receiver that there is vested in the Official Receiver by operation of —

(*a*) section 213;

(*b*) any previous written law corresponding to section 213; or

(*c*) any law of a designated country corresponding with section 249,

any estate, property or interest in property, whether solely or together with any other person, of a beneficial nature or held in trust for a third party who remains untraceable even after taking the prescribed steps, the Official Receiver may sell or otherwise dispose of or deal with that estate, property or interest, or any part of that estate, property or interest, as the Official Receiver sees fit.

(2) The Official Receiver may —

(*a*) sell or otherwise dispose of or deal with any estate, property or interest mentioned in subsection (1), either solely or in concurrence with any other person, in such manner, for such consideration, and by public auction, public tender or private contract upon such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as the Official Receiver thinks expedient; and

(*b*) make, execute, sign and give such contracts, instruments and documents as the Official Receiver thinks necessary.

(3) The Official Receiver is to be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon the Official Receiver by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on the Official Receiver by this Subdivision must be applied in defraying all costs, expenses, commission and fees incidental to the exercise of those powers, and thereafter to any payment authorised by this Subdivision, and the surplus, if any, must be dealt with as if they were unclaimed moneys paid to the Official Receiver under section 197.

Liability of Official Receiver and Government as to property vested in Official Receiver

215.—(1) Property vested in the Official Receiver by operation of this Subdivision, or by operation of any previous written law corresponding to this Subdivision, is liable and subject to all charges, claims and liabilities imposed on such property or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company.

(2) Despite subsection (1), no duty, obligation or liability is imposed on the Official Receiver or the Government to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier, other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company, so far as those assets are, in the opinion of the Official Receiver, properly available for and applicable to such payment.

Accounts and audit

216.—(1) The Official Receiver must —

(*a*) record in a register a statement of any property that comes to the Official Receiver's hand or under the Official Receiver's control, or that to the Official Receiver's knowledge is vested in the Official Receiver by operation

of this Subdivision and by reason of the Official Receiver's dealings with such property;

(*b*) keep accounts of all moneys arising from such property, and of how those moneys have been disposed of; and

(*c*) keep all accounts, vouchers, receipts and papers relating to the property and moneys mentioned in paragraphs (*a*) and (*b*).

(2) The Auditor-General has all the powers in respect of such accounts as are conferred upon the Auditor-General by any Act relating to audit of public accounts.

PART 9

PROVISIONS APPLICABLE IN JUDICIAL MANAGEMENT AND WINDING UP

Division 1 — Preliminary

Interpretation of this Part

217.—(1) For the purposes of sections 224 to 229 —

"commencement of the judicial management", in relation to a company, means —

(*a*) in a case where the judicial manager is appointed by the Court under section 91 — the time when the application for the judicial management order was made; or

(*b*) in a case where the judicial manager is appointed by the creditors of the company under section 94(11)(*e*) — the time when the copy of the notice of appointment of the interim judicial manager is filed with the Registrar of Companies and the Official Receiver under section 94(5)(*a*);

"commencement of the winding up", in relation to a company, means —

(*a*) in a case where the company is being wound up under an order of the Court made at a time when the

company was being wound up voluntarily — the time of the commencement of the voluntary winding up as determined in accordance with paragraph (*d*) or (*e*);

(*b*) in a case where a company is being wound up under an order of the Court on an application made while the company was in judicial management — the time of the commencement of the judicial management as determined in accordance with this section;

(*c*) in a case where a company is being wound up under an order of the Court in any other case — the time of the making of the winding up application;

(*d*) in a case where the company is being wound up voluntarily and a provisional liquidator has been appointed before the resolution for voluntary winding up was passed — the time when the declaration mentioned in section 161(1) was lodged with the Registrar of Companies; or

(*e*) in any other case where the company is being wound up voluntarily — the time of the passing of the resolution for voluntary winding up.

(2) For the purposes of this Part —

(*a*) a company "enters judicial management" or is "in judicial management" within the meanings given to those terms in section 88(2)(*a*) to (*e*); and

(*b*) a person is connected with a company if —

(i) the person is a director of the company or an associate of such a director; or

(ii) the person is an associate of the company.

(3) For the purposes of subsection (2)(*b*), a person (*A*) is an associate of another person (*B*) if —

(*a*) *A* is an associate of *B*; or

(*b*) *B* is an associate of *A*.

(4) A person is an associate of an individual if that person is —

(*a*) the individual's spouse; or

(*b*) a relative of —

(i) the individual; or

(ii) the individual's spouse; or

(*c*) the spouse of a relative of —

(i) the individual; or

(ii) the individual's spouse.

(5) A person is an associate of —

(*a*) any person with whom that person is in partnership; and

(*b*) any spouse or relative of any individual with whom that person is in partnership.

(6) A person is an associate of any person whom that person employs or by whom that person is employed.

(7) A person in the person's capacity as trustee of a trust is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(8) A corporation is an associate of another corporation —

(*a*) if the same person has control of both corporations;

(*b*) if a person has control of one of the 2 corporations and persons who are that person's associates, or that person and persons who are that person's associates, have control of the other corporation; or

(*c*) if a group of 2 or more persons has control of each corporation, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate.

(9) A corporation is an associate of another person if that person has control of the corporation, or if that person and persons who are that person's associates together have control of the corporation.

(10) A person is an associate of a corporation if persons who are his or her associates are employed by the corporation.

(11) For the purposes of this section, an individual (*C*) is a relative of an individual (*D*) if *C* is *D*'s brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating —

(*a*) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as that person's child; and

(*b*) an illegitimate child as the legitimate child of the child's mother and reputed father.

(12) References in this section to a spouse include a former spouse and a reputed husband or wife.

(13) For the purposes of this section, any director or other officer of a corporation is to be treated as employed by that corporation.

(14) For the purposes of this section, a person is to be taken as having control of a corporation (*C*) if —

(*a*) the directors of *C* or of another corporation which has control of *C* (or any of those directors) are accustomed to act in accordance with the person's directions or instructions; or

(*b*) the person is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of *C* or another corporation which has control of *C*,

and where 2 or more persons together satisfy paragraph (*a*) or (*b*), they are to be taken as having control of *C*.

(15) For the purposes of this section, "corporation" includes any body corporate (whether incorporated in Singapore or elsewhere), and references to directors and other officers of a corporation and to voting power at any general meeting of a corporation have effect with any necessary modifications.

Division 2 — Proof of debts

Description of debts provable in judicial management or winding up

218.—(1) Subject to this section, the following are provable where a company other than an insolvent company is being wound up:

(*a*) any debt or liability to which the company —

(i) is subject at the commencement of the winding up; or

(ii) may become subject after the commencement of the winding up;

(*b*) any interest payable by the company on any debt or liability mentioned in paragraph (*a*).

(2) Subject to this section and section 203, the following are provable where a company is in judicial management or an insolvent company is being wound up:

(*a*) any debt or liability to which the company —

(i) is subject at the commencement of the judicial management or winding up, as the case may be; or

(ii) may become subject after the commencement of the judicial management or winding up (as the case may be) by reason of any obligation incurred before the commencement of the judicial management or winding up, as the case may be;

(*b*) any interest, on any debt or liability mentioned in paragraph (*a*), that is payable by the company in respect of any period before the commencement of the judicial management or winding up, as the case may be.

(3) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, breach of trust, tort or bailment, or an obligation to make restitution, are not provable in the judicial management or insolvent winding up of a company.

(4) An estimate is to be made by the judicial manager or liquidator of the value of any debt or liability provable under this section that, by

reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any such estimate by the judicial manager or liquidator may appeal to the Court.

(6) If in the opinion of the Court the value of the debt or liability cannot be fairly estimated, the Court may make an order to that effect, and upon the making of that order the debt or liability is, for the purposes of this Act, deemed to be a debt not provable in the judicial management or winding up of the company.

(7) If in the opinion of the Court the value of the debt or liability can be fairly estimated, the Court may assess the value of the debt or liability and may give all necessary directions for the purpose of valuing the debt or liability, and the amount of the value when assessed is deemed to be a debt provable in the judicial management or winding up of the company.

(8) An amount payable under any order made by a court under any written law relating to the confiscation of the proceeds of crime is provable in the judicial management or winding up of a company.

Mutual credit and set-off

219.—(1) This section applies to —

(*a*) a company in judicial management; and

(*b*) an insolvent company that is being wound up.

(2) Where there have been any mutual credits, mutual debts or other mutual dealings between a company and any creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings must be set off against each other and only the balance is a debt provable in the judicial management or the winding up of the company, as the case may be.

(3) There is to be excluded from any set-off under subsection (2) any debt or liability of the company which —

(*a*) is not a debt provable in judicial management or winding up; or

(*b*) arises by reason of an obligation incurred at a time when the creditor had notice that an interim judicial manager had been appointed under section 94(3), or that the application for a judicial management order or the application for winding up (as the case may be) relating to the company was pending.

(4) A sum is to be regarded as being due to or from the company for the purposes of subsection (2) regardless of whether —

(*a*) the sum is payable at present or in the future;

(*b*) the obligation by virtue of which the sum is payable is certain or contingent; or

(*c*) the sum is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

Regulations as to proof of debts

220. The prescribed regulations must be observed with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and any other matters relating to proof of debts.

Contracts to which company is party

221.—(1) This section applies where a contract has been made with a company that is subsequently placed under judicial management or subsequently goes into insolvent liquidation.

(2) The Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the company of damages for non-performance or otherwise as appears to the Court to be equitable.

(3) Any damages payable by the company by virtue of an order of the Court under this section is a debt provable in the judicial management or winding up of the company, as the case may be.

(4) Where a company that is in judicial management or that is being wound up is a contractor in respect of any contract jointly with any

person, that person may sue or be sued in respect of the contract without the joinder of the company.

Interest on debts

222.—(1) In the judicial management or insolvent winding up of a company, where interest on a debt was not previously reserved or agreed, interest is allowed on the debt, at a rate not exceeding the prescribed rate of interest, in the following circumstances:

(*a*) in any case where the debt is due by virtue of a written instrument and payable at a certain time, interest is allowed for the period between that time and the date of commencement of the judicial management or winding up, as the case may be;

(*b*) in any other case, if a demand for payment was made in writing by or on behalf of the creditor before the commencement of the judicial management or winding up (as the case may be) and notice was given that interest would be payable from the date of the demand to the date of the payment, interest is allowed for the period between the date of the demand and the date of commencement of the judicial management or winding up, as the case may be.

(2) For the purposes of distribution of dividend —

(*a*) where a debt, which has been proved in the judicial management or winding up (as the case may be) includes interest, and the rate of such interest was previously agreed or reserved, the interest is calculated —

(i) from the date the interest was payable to the date of commencement of the judicial management or winding up, as the case may be; and

(ii) at the rate previously agreed or reserved; and

(*b*) where a debt, which has been proved in the judicial management or winding up (as the case may be) includes interest, and the rate of such interest was not previously agreed or reserved, the interest is calculated —

(i) from the date the interest was payable to the date of commencement of the judicial management or winding up, as the case may be; and

(ii) at the prescribed rate of interest.

(3) Interest on preferential debts ranks equally with interest on other debts.

(4) In this section, "interest" includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called.

(5) This section applies subject to any express provision of any creditor's compromise or arrangement.

Realisation of security

223.—(1) In the insolvent winding up of a company, no secured creditor is entitled to any interest in respect of the secured creditor's debt after the commencement of the winding up, if the secured creditor does not realise the secured creditor's security within 12 months after the commencement of the winding up or such further period as the liquidator may determine.

(2) Where a company is in judicial management and a secured creditor has obtained the leave of the Court or consent of the judicial manager to enforce any security over the company's property under section 96(4)(*e*), that secured creditor is not entitled to any interest in respect of the secured creditor's debt from the date that such leave or consent is obtained, if the secured creditor does not realise the secured creditor's security within 12 months after the date on which the leave or consent to enforce the security was given or such further period as the judicial manager may determine.

Division 3 — Adjustment of prior transactions

Transactions at undervalue

224.—(1) Subject to this section and sections 226 and 227, where a company is in judicial management or is being wound up, and the company has at the relevant time (as defined in section 226) entered into a transaction with any person at an undervalue, the judicial

manager or liquidator (as the case may be) may apply to the Court for an order under this section.

(2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(3) For the purposes of this section and sections 226 and 227, a company enters into a transaction with a person at an undervalue if —

(*a*) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(*b*) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(4) The Court must not make an order under this section in respect of a transaction at an undervalue if —

(*a*) the company entered into the transaction in good faith and for the purpose of carrying on its business; and

(*b*) at the time the company entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

Unfair preferences

225.—(1) Subject to this section and sections 226 and 227, where a company is in judicial management or is being wound up, and the company has at the relevant time (as defined in section 226), given an unfair preference to any person, the judicial manager or liquidator (as the case may be) may apply to the Court for an order under this section.

(2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that unfair preference.

(3) For the purposes of this section and sections 226 and 227, a company gives an unfair preference to a person if —

(*a*) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(*b*) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company's winding up, will be better than the position that person would have been in if that thing had not been done.

(4) The Court must not make an order under this section in respect of an unfair preference given to any person unless the company which gave the preference was influenced in deciding to give the unfair preference by a desire to produce in relation to that person the effect mentioned in subsection (3)(*b*).

(5) A company which has given an unfair preference to a person who, at the time the unfair preference was given, was connected with the company (otherwise than by reason only of being the company's employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give the unfair preference by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done pursuant to an order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

Relevant time under sections 224 and 225

226.—(1) Subject to this section, the time at which a company enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the preference given —

(*a*) in the case of a transaction at an undervalue — within the period starting 3 years before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up, as the case may be;

(*b*) in the case of an unfair preference which is not a transaction at an undervalue and which is given to a person who is connected with the company (otherwise than by reason only of being the company's employee) — within the period starting 2 years before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up, as the case may be; and

(*c*) in any other case of an unfair preference — within the period starting one year before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up, as the case may be.

(2) Where a company enters into a transaction at an undervalue or gives an unfair preference at a time mentioned in subsection (1)(*a*), (*b*) or (*c*), that time is not a relevant time for the purposes of sections 224 and 225 unless the company —

(*a*) is unable to pay its debts at that time within the meaning of section 125(2); or

(*b*) becomes unable to pay its debts within the meaning of section 125(2) in consequence of the transaction or preference.

(3) Where a transaction is entered into at an undervalue by a company with a person who is connected with the company (otherwise than by reason only of being the company's employee), the requirements under subsection (2) are presumed to be satisfied unless the contrary is shown.

(4) Despite subsection (1), the time at which a company enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the preference given during the period starting on the date of the commencement of the judicial management in respect of the company and ending on the date the company entered judicial management.

(5) Where any period mentioned in subsection (6) in respect of a company coincides with any period mentioned in subsection (1)(*a*),

(*b*) or (*c*) in respect of that company, the time at which a transaction at an undervalue is entered into or an unfair preference is given by that company is a relevant time if that transaction is entered into or that preference is given during the period immediately before that period mentioned in subsection (1)(*a*), (*b*) or (*c*) (as the case may be) that is equal to the sum of all such periods mentioned in subsection (6) coinciding with the period mentioned in subsection (1)(*a*), (*b*) or (*c*), as the case may be.

(6) The periods mentioned in subsection (5) are any of the following:

(*a*) the automatic moratorium period mentioned in section 64(8);

(*b*) the period during which an order under section 64(1)(*a*) is in force in relation to the company, including any extension of that period under section 64(7);

(*c*) the period during which an order under section 65(1)(*a*) is in force in relation to the company, including any extension of that period under section 65(5);

(*d*) the period during which an order under section 210(10) of the Companies Act is in force in relation to the company.

Orders under sections 224 and 225

227.—(1) Without affecting the generality of sections 224(2) and 225(2), an order under section 224 or 225 with respect to a transaction or preference entered into or given by a company may, subject to this section —

(*a*) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;

(*b*) require any property to be so vested if it represents in any person's hands the application of the proceeds of sale of property so transferred or of money so transferred;

(*c*) release or discharge (in whole or in part) any security given by the company;

(*d*) require any person to pay, in respect of benefits received by the person from the company, such sums to the company, the judicial manager or the liquidator as the Court may direct;

(*e*) provide for any surety or guarantor, whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference, to be under such new or revived obligations to that person as the Court thinks appropriate;

(*f*) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security to have the same priority as a security released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference; or

(*g*) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the judicial management or the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the unfair preference.

(2) An order under section 224 or 225 may affect the property of, or impose any obligation on, any person whether or not that person is the person with whom the company in question entered into the transaction or the person to whom the unfair preference was given, as the case may be.

(3) An order under section 224 or 225 does not —

(*a*) prejudice any interest in property which was acquired from a person other than the company in question and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

(*b*) require a person who received a benefit from the transaction or unfair preference in good faith and for value to pay a sum to the company, the judicial manager or the liquidator,

except where that person was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when that person was a creditor of the company in question.

(4) For the purposes of subsection (3)(*a*) and (*b*), a person (called in this section the relevant person) who has acquired an interest in property from a person other than the company in question, or who has received a benefit from the transaction or unfair preference, is presumed (unless the contrary is shown) to have acquired the interest or received the benefit (as the case may be) otherwise than in good faith if, at the time of that acquisition or receipt —

(*a*) the relevant person had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(*b*) the relevant person was connected with —

(i) the company in question; or

(ii) the person with whom the company in question entered into the transaction, or to whom the company gave the unfair preference, as the case may be.

(5) For the purposes of subsection (4)(*a*), the relevant surrounding circumstances are —

(*a*) the fact that the company in question entered into the transaction at an undervalue; or

(*b*) the circumstances which amounted to the giving of the unfair preference by the company in question.

(6) For the purposes of subsection (4)(*a*), the relevant person has notice of the relevant proceedings if the relevant person has notice of —

(*a*) the appointment of an interim judicial manager under section 94(3), the making of an application for a judicial management order, the making of an application for winding up in respect of the company, or the appointment of or the obligation to appoint a provisional liquidator under section 161; or

(*b*) the fact that the company has entered judicial management or is being wound up.

(7) The provisions of sections 224, 225 and 226 and this section apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

Extortionate credit transactions

228.—(1) This section applies where a company is in judicial management or is being wound up, and the company is or has been a party to a transaction for or involving the provision to that company of credit.

(2) The Court may, on the application of the judicial manager or liquidator of the company, make an order with respect to the transaction if the transaction is or was extortionate and was entered into within 3 years before the commencement of the judicial management or winding up, as the case may be.

(3) For the purposes of this section, a transaction is presumed to be extortionate, unless the contrary is proved, if, having regard to the risk accepted by the person providing the credit —

(*a*) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(*b*) it is harsh and unconscionable or substantially unfair.

(4) An order under this section may contain one or more of the following:

(*a*) provision setting aside the whole or part of any obligation created by the transaction;

(*b*) provision varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(*c*) provision requiring any person who is or was party to the transaction to pay the company or the liquidator any sums

paid to that person, by virtue of the transaction, by the company;

(*d*) provision requiring any person to surrender to the company or the liquidator any property held by the person as security for the purposes of the transaction;

(*e*) provision directing accounts to be taken between any persons.

Avoidance of certain floating charges

229.—(1) A floating charge on the company's property created at a relevant time is invalid except to the extent of the aggregate of —

(*a*) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;

(*b*) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and

(*c*) the amount of such interest (if any) as is payable on the amount falling within paragraph (*a*) or (*b*) pursuant to any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(2) Subject to subsections (3) and (5), the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created —

(*a*) in the case of a charge which is created in favour of a person who is connected with the company, at a time within the period of 2 years ending on the commencement of the judicial management or winding up, as the case may be;

(*b*) in the case of a charge which is created in favour of any other person, at a time within the period of one year ending on the commencement of the judicial management or winding up, as the case may be; or

(*c*) at a time within the period starting on the commencement of the judicial management of the company and ending on the date the company enters judicial management.

(3) Where a company creates a floating charge at a time mentioned in subsection (2)(*b*) and the person in whose favour the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company —

(*a*) is at that time unable to pay its debts within the meaning of section 125(2); or

(*b*) becomes unable to pay its debts within the meaning of section 125(2) in consequence of the transaction under which the charge is created.

(4) For the purposes of subsection (1)(*a*), the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

(5) Where any period mentioned in subsection (6) in respect of a company coincides with any period mentioned in subsection (2)(*a*), (*b*) or (*c*) in respect of that company, the time at which a floating charge is created by that company is a relevant time if the floating charge is created during the period immediately before that period mentioned in subsection (2)(*a*), (*b*) or (*c*) (as the case may be) that is equal to the sum of all such periods mentioned in subsection (6) coinciding with the period mentioned in subsection (2)(*a*), (*b*) or (*c*), as the case may be.

(6) The periods mentioned in subsection (5) are any of the following:

(*a*) the automatic moratorium period mentioned in section 64(8);

(*b*) the period during which an order under section 64(1)(*a*) is in force in relation to the company, including any extension of that period under section 64(7);

(*c*) the period during which an order under section 65(1)(*a*) is in force in relation to the company, including any extension of that period under section 65(5);

(*d*) the period during which an order under section 210(10) of the Companies Act is in force in relation to the company.

Division 4 — Disclaimer of onerous property

Power to disclaim onerous property

230.—(1) A judicial manager or liquidator may, by the giving of the prescribed notice to the creditors and the Official Receiver, disclaim any onerous property regardless of whether the judicial manager or liquidator has taken possession of the onerous property, endeavoured to sell the onerous property, or otherwise exercised rights of ownership in relation to the onerous property.

(2) The following is onerous property for the purposes of this section:

(*a*) any unprofitable contract;

(*b*) any other property of the company which —

(i) is unsaleable;

(ii) is not readily saleable; or

(iii) may give rise to a liability of the company to pay money or perform any other onerous act.

(3) A disclaimer under this section —

(*a*) determines, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(*b*) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer may not be given under subsection (1) in respect of any property —

(*a*) in the case of any property subject to any written law set out in the first column of the Second Schedule, unless —

(i) the judicial manager or liquidator (as the case may be) has given written notice of his or her intention to disclaim the property to the relevant person set out opposite in the second column; and

(ii) a period of 28 days starting on the date of the notice mentioned in sub-paragraph (i) has elapsed; or

(*b*) in any case, if —

(i) a person interested in the property has applied in writing to the judicial manager or liquidator (as the case may be) or any of the judicial manager or liquidator's predecessors, requiring the judicial manager or liquidator or that predecessor to decide whether he or she will disclaim the property; and

(ii) the notice of disclaimer is not given under this section in respect of that property within a period of 28 days, or such longer period as the Court may allow, starting on the date of the application mentioned in sub-paragraph (i).

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the company to the extent of the loss or damage and may prove for the loss or damage in the judicial management or winding up of the company.

Disclaimer of leaseholds

231.—(1) A disclaimer under section 230 of any property of a leasehold nature does not take effect unless a copy of the notice of disclaimer has been served on every person claiming under the company as sub-lessee or mortgagee and either —

(*a*) no application under section 232 is made with respect to that property before the end of the period of 14 days starting on the date on which the last notice served under this subsection was served; or

(*b*) where such an application has been made, the Court directs that the disclaimer takes effect.

(2) Where the Court gives a direction under subsection (1)(*b*), the Court may also, instead of or in addition to any order the Court makes under section 232, make such order with respect to fixtures, tenant's improvements and other matters arising out of the lease as the Court thinks fit.

Court order vesting disclaimed property

232.—(1) This section and section 233 apply where a judicial manager or liquidator has disclaimed property under section 230.

(2) An application under this section may be made to the Court by —

(*a*) any person who claims an interest in the disclaimed property; or

(*b*) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) The Court may, on an application made under subsection (2), make an order to set aside the disclaimer or make such order as the Court thinks just, where the injury caused by the disclaimer outweighs any advantage likely to be gained by the judicial manager or liquidator.

(4) The Court may, on an application made under subsection (2), also make an order, on such terms as the Court thinks fit, for the vesting of the disclaimed property in, or for its delivery to —

(*a*) a person entitled to the disclaimed property or a trustee for such a person; or

(*b*) a person subject to a liability mentioned in subsection (2)(*b*) or a trustee for such a person.

(5) The Court must not make an order under subsection (4)(*b*) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(6) The effect of any order under this section must be taken into account in assessing for the purpose of section 230(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(7) An order under this section vesting property in any person —

(*a*) need not be completed by conveyance, assignment or transfer; but

(*b*) does not have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of land by the appropriate authority.

Order under section 232 in relation to leaseholds

233.—(1) The Court must not make an order under section 232 vesting property of a leasehold nature in any person claiming under the company as sub-lessee or mortgagee except on terms making that person —

(*a*) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the judicial management or winding up; or

(*b*) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to that person at the commencement of the judicial management or winding up.

(2) The Court must not make an order under section 232 vesting part of any property comprised in a lease in any person claiming under the company as sub-lessee or mortgagee except on terms making that person —

(*a*) subject to the same liabilities and obligations as the company was subject to under the lease in relation to that part of the property at the commencement of the judicial management or winding up; or

(*b*) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease in

relation to that part of the property had been assigned to that person at the commencement of the judicial management or winding up.

(3) Where subsection (1) applies and no person claiming under the company as sub-lessee or mortgagee is willing to accept an order under section 232 on the terms mentioned in subsection (1), the Court may (by order under section 232) vest the company's estate or interest in the property in —

(*a*) any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease; or

(*b*) such person mentioned in paragraph (*a*) freed and discharged from all estates, encumbrances and interests created by the company.

(4) Where subsection (1) applies and a person claiming under the company as sub-lessee or mortgagee declines to accept an order under section 232, that person is excluded from all interest in the property.

Division 5 — Offences

Offences by officers of companies in judicial management or in liquidation

234.—(1) Every person who, being a past or present officer or a contributory of a company which is in judicial management or is being wound up —

(*a*) does not to the best of his or her knowledge and belief fully and truly disclose to the judicial manager or liquidator all the property movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part of such 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 judicial manager or liquidator, or as the judicial manager or liquidator directs —

(i) all the movable and immovable property of the company in the person's custody or under the person's control and which the person is required by law to deliver up; or

(ii) all books and papers in the person's custody or under the person's control belonging to the company and which the person is required by law to deliver up;

(*c*) within 12 months immediately before the commencement of the judicial management or winding up or at any time thereafter —

(i) has concealed any part of the property of the company to the prescribed value 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 prescribed value or more;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in, or has been privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company

is carrying on its business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;

(*d*) makes any material omission in any statement relating to the affairs of the company;

(*e*) knowing or believing that a false debt has been proved by any person fails to inform the judicial manager or liquidator of the false debt within one month after coming to such knowledge or belief;

(*f*) prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(*g*) within 12 months immediately before the commencement of the judicial management or 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 immediately before the commencement of the judicial management or 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, to the judicial management or to the winding up,

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

(2) It is a good defence —

(*a*) to a charge under subsection (1)(*a*), (*b*) or (*d*) or subsection (1)(*c*)(i), (vii) or (viii) if the accused proves that he or she had no intent to defraud; and

(*b*) to a charge under subsection (1)(*c*)(iii) or (iv) or (*f*) if the accused proves that he or she had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(*c*)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

Inducement to be appointed judicial manager or liquidator

235. 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 or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the company's judicial manager or liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months.

Penalty for destruction, falsification, etc., of books

236. Every officer or contributory of any company which is in judicial management or is being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

Liability where proper accounts not kept

237.—(1) If, on an investigation under this Act or where a company is in judicial management or is being wound up, it is shown that proper books of account were not kept by the company throughout the shorter of —

(*a*) the period of 2 years immediately preceding the commencement of the investigation, judicial management or winding up, as the case may be; or

(*b*) the period between incorporation of the company and the commencement of the investigation, judicial management or winding up, as the case may be,

every officer who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months.

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person charged to prove that the person acted honestly and to show that, in the circumstances in which the business of the company was carried on, the default was excusable.

(3) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company —

(*a*) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

(*b*) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

Responsibility for fraudulent trading

238.—(1) If, in the course of the judicial management or winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to

defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the judicial manager, liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where the Court makes any declaration under subsection (1), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular —

(*a*) may make provision for making the liability of any person under the declaration a charge —

(i) on any debt or obligation due from the company to the person liable; or

(ii) on any charge or any interest in any charge on any assets of the company held by or vested in —

(A) the person liable;

(B) any corporation or other person on behalf of the person liable; or

(C) any person claiming as assignee from or through the person liable or any corporation or person acting on behalf of the person liable; and

(*b*) may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2)(*a*)(ii)(C), "assignee" —

(*a*) includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created; but

(*b*) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good

faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 7 years or to both.

(5) Subsection (4) applies to a company whether or not it has been, or is in the course of being, wound up, and whether or not it has been, or is, in judicial management.

(6) This section has effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(7) On the hearing of an application under subsection (1), the judicial manager or liquidator may give evidence or call witnesses.

Responsibility for wrongful trading

239.—(1) If, in the course of the judicial management or winding up of a company or in any proceedings against a company, it appears that the company has traded wrongfully, the Court, on the application of any person mentioned in subsection (5), may, if it thinks proper to do so, declare that any person who was a party to the company trading in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs, if that person —

(*a*) knew that the company was trading wrongfully; or

(*b*) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully.

(2) Where the Court makes any declaration under subsection (1), the Court may relieve, in whole or in part and on such terms as the Court thinks fit, the person declared responsible under that declaration from the personal liability for which he or she is declared responsible, if —

(*a*) the person acted honestly; and

(*b*) having regard to all the circumstances of the case, the person ought fairly to be relieved from the personal liability.

(3) Where the Court makes any declaration under subsection (1), it may give such further directions as the Court thinks proper for the purpose of giving effect to that declaration, and in particular —

(*a*) may make provision for making the liability of any person under the declaration a charge —

(i) on any debt or obligation due from the company to the person liable; or

(ii) on any charge or any interest in any charge on any assets of the company held by or vested in —

(A) the person liable;

(B) any corporation or other person on behalf of the person liable; or

(C) any person claiming as assignee from or through the person liable or any corporation or other person acting on behalf of the person liable;

(*b*) may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection; and

(*c*) may provide that sums recovered under this section be paid to such persons or classes of persons, for such purposes, in such amounts or proportions, at such times and in such priorities between them as the Court may specify.

(4) For the purpose of subsection (3)(*a*)(ii)(C), "assignee" —

(*a*) includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created; but

(*b*) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good

faith and without notice of any of the matters on the ground of which the declaration is made.

(5) The following persons may make an application under subsection (1):

(*a*) the judicial manager of the company;

(*b*) the liquidator of the company;

(*c*) the Official Receiver;

(*d*) any creditor or contributory of the company, with the leave of —

(i) the judicial manager or the liquidator, as the case may be; or

(ii) the Court.

(6) Where a company has traded wrongfully, every person who was a party to the wrongful trading and who —

(*a*) knew that the company was trading wrongfully; or

(*b*) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

(7) Subsection (6) applies to a company whether or not it has been, or is in the course of being, wound up, and whether or not it has been, or is, in judicial management.

(8) This section has effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(9) On the hearing of an application under subsection (1), the judicial manager or liquidator may give evidence or call witnesses.

(10) Any company or (with the company's consent) any person party to or interested in becoming party to the carrying on of the business of the company, may apply to the Court for a declaration as to

whether a particular course of conduct, a particular transaction or a particular series of transactions of the company at the time of and after such application would constitute wrongful trading and on any such application the Court may, on such terms and conditions as the Court thinks fit, declare that such course of action, transaction or series of transactions does not constitute wrongful trading within the meaning of this section.

(11) The Court, when making a declaration under subsection (10), may include provisions to ensure the confidentiality or publication of the declaration, the terms and conditions of the declaration, or any part of the declaration or terms and conditions.

(12) For the purposes of this section, a company trades wrongfully if —

(*a*) the company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full; or

(*b*) the company incurs debts or other liabilities —

(i) that it has no reasonable prospect of meeting in full; and

(ii) that result in the company becoming insolvent.

Power of Court to assess damages against delinquent officers, etc.

240.—(1) If, in the course of the judicial management or winding up of a company, it appears that any person who has taken part in the formation or promotion of the company or any past or present judicial manager, liquidator or officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may, on the application of the judicial manager or liquidator or of any creditor or contributory —

(*a*) examine into the conduct of such person, judicial manager, liquidator or officer; and

(*b*) compel such person, judicial manager, liquidator or officer to —

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

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

(2) This section extends and applies to and in respect of the receipt of any money or property by any officer of the company during the 2 years preceding the commencement of the judicial management or winding up (as the case may be) whether by way of salary or otherwise, appearing to the Court to be unfair or unjust to other members of the company.

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

Prosecution of delinquent officers and members of company

241.—(1) If it appears to the Court, in the course of the judicial management or winding up of a company by the Court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he or she is criminally liable, the Court may, either on the application of any person interested in the judicial management or winding up (as the case may be) or of its own motion, direct the judicial manager or liquidator to prosecute the offender or to refer the matter to the Minister.

(2) If it appears to the judicial manager, in the course of a judicial management, or the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he or she is criminally liable, the judicial manager or liquidator must immediately report the matter to the Minister and must, in respect of information or documents in the judicial manager's or liquidator's possession or under the judicial manager's or liquidator's control which relate to the matter in question, furnish the Minister with such information and give to the Minister such access to and facilities for

inspecting and taking copies of any document as the Minister may require.

(3) If it appears to the judicial manager, in the course of a judicial management, or the liquidator, in the course of any winding up, that the company which is in judicial management or which is being wound up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the judicial manager or liquidator must immediately report the matter in writing to the Official Receiver and must furnish the Official Receiver with such information and give to the Official Receiver such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may investigate the matter and for the purposes of such an investigation has all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to the Minister that the case is not one in which proceedings ought to be taken by the Minister, the Minister must inform the judicial manager or liquidator (as the case may be) accordingly, and upon being informed, subject to the prior approval of the Court, the judicial manager or liquidator (as the case may be) may take proceedings against the offender.

(5) If it appears to the Court, in the course of a judicial management or a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he or she is criminally liable and that no report with respect to the matter has been made by the judicial manager or liquidator (as the case may be) to the Minister, the Court may, on the application of any person interested in the judicial management or voluntary winding up or of its own motion, direct the judicial manager or liquidator (as the case may be) to make such a report, and on a report being made accordingly this section has effect as though the report has been made under subsection (2).

(6) If, where any matter is reported or referred to the Minister or the Official Receiver under this section, the Minister or the Official Receiver (as the case may be) considers that the case is one in which prosecution ought to be instituted, the Minister or the Official

Receiver (as the case may be) may institute proceedings accordingly, and the judicial manager, the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, must give the Minister or the Official Receiver all assistance in connection with the prosecution which he or she is reasonably able to give.

(7) For the purposes of subsection (6), "agent", in relation to a company, includes any banker or solicitor of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by subsection (6), the Court may, on the application of the Minister or the Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a judicial manager or liquidator the Court may, unless it appears that the failure or neglect to comply was due to the judicial manager or liquidator not having in his or her hands sufficient assets of the company to enable him or her to give assistance in the manner required by subsection (6), direct that the costs of the application be borne by the judicial manager or liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the judicial manager or liquidator in proceedings brought under this section be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the property of the company and any debts to which priority is given by this Act, all such costs and expenses are payable out of the property of the company as part of the costs of the judicial management or winding up of the company.

Division 6 — Management by judicial managers and liquidators

Getting in company's property

242.—(1) Where a company is in judicial management or is being wound up, and any person has in his or her possession or control any

property, books, papers or records to which the company appears to be entitled, the Court may require that person to immediately (or within such period as the Court may direct) pay, deliver, convey, surrender or transfer the property, books, papers or records to the judicial manager or liquidator, as the case may be.

(2) Where the judicial manager or liquidator, as the case may be —

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

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

the judicial manager or liquidator, as the case may be —

(*c*) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except insofar as that loss or damage is caused by the judicial manager's or liquidator's negligence, as the case may be; and

(*d*) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Duty to cooperate with judicial manager and liquidator

243.—(1) Where a company is in judicial management or is being wound up, each of the persons mentioned in subsection (2) must —

(*a*) give to the Official Receiver or liquidator (where the company is being wound up) or the judicial manager (where the company is in judicial management) such information concerning the company and its promotion, formation, business, dealings, affairs or property as the Official Receiver, liquidator or judicial manager (as the case may be) may reasonably require at any time after the commencement of the winding up or judicial management, as the case may be; and

(*b*) attend on the Official Receiver or liquidator (where the company is being wound up) or the judicial manager

(where the company is in judicial management) at such times as the Official Receiver, liquidator or judicial manager (as the case may be) may reasonably require.

(2) The persons mentioned in subsection (1) are —

(*a*) any person who is or has at any time been an officer of the company;

(*b*) any person who has taken part in the formation of the company at any time within the period of one year before the commencement of the winding up or judicial management, as the case may be;

(*c*) any person who —

(i) is in the employment of the company (including employment under a contract for services) or has been in the employment of the company (including employment under a contract for services) within the period of one year before the commencement of the winding up or judicial management, as the case may be; and

(ii) is in the opinion of the Official Receiver, liquidator or judicial manager (as the case may be), capable of giving information which the Official Receiver, liquidator or judicial manager (as the case may be) requires; and

(*d*) in the case of a company being wound up by the Court, any person who has acted as judicial manager, receiver and manager or liquidator of the company.

(3) Any person who, without reasonable excuse, fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

Inquiry into company's dealings, etc.

244.—(1) Where a company is in judicial management or is being wound up, the Court may, on the application of any person mentioned in subsection (2), summon to appear before the Court —

(*a*) any officer of the company;

(*b*) any person who was previously an officer of the company;

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

(*d*) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, including any banker, solicitor or auditor,

and the Court may require any person mentioned in paragraphs (*a*) to (*d*) to submit an affidavit to the Court containing an account of the person's dealings with the company or to produce any books, papers or other records in the person's possession or under the person's control relating to the promotion, formation, business, dealings, affairs or property of the company.

(2) The persons mentioned in subsection (1) are —

(*a*) in the case of a company in judicial management, the judicial manager;

(*b*) in the case of a company being wound up, the Official Receiver or liquidator; or

(*c*) in either case, a creditor or contributory of the company with the leave of the Court.

(3) In a case where a person, without reasonable excuse, fails to appear before the Court when he or she is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his or her appearance before the Court under this section, the Court may, for the purpose of bringing that person and anything in his or her possession before the Court, cause a warrant to be issued to a police officer —

(*a*) for the arrest of that person; and

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

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

(4) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the promotion, formation, business, dealings, affairs or property of the company.

(5) The Court may —

(*a*) direct that an examination under subsection (4) be held before any District Judge, who has for the purposes of the examination the same powers as the Court of examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses; or

(*b*) direct that an examination under subsection (4) be held in public.

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

(7) If it appears to the Court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the Court may, on the application of the judicial manager, Official Receiver or liquidator, after examining that person on the matter, order that person to pay to the judicial manager, Official Receiver or liquidator (as the case may be), at such time and in such manner as the Court may direct, the whole or any part of the amount

due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

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

PART 10

WINDING UP OF UNREGISTERED COMPANIES AND LIQUIDATION OR DISSOLUTION OF FOREIGN COMPANIES

Division 1 — Winding up of unregistered companies

Preliminary

245.—(1) For the purposes of this Division, "unregistered company" includes a foreign company and any partnership, association, club or company but does not include a company incorporated under the Companies Act or under any corresponding previous written law.

(2) This Division is in addition to, and not in derogation of, any provisions contained in this or any other written law with respect to the winding up of companies by the Court and the Court may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court in winding up companies.

Winding up of unregistered companies

246.—(1) Subject to this Division, any unregistered company may be wound up under Parts 8 and 9, which apply to an unregistered company with the following adaptations:

(*a*) the principal place of business of the unregistered company in Singapore is for all the purposes of the winding up the registered office of the company;

(*b*) the unregistered company must not be wound up voluntarily;

(*c*) the circumstances in which the unregistered company may be wound up are —

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

(ii) if the company is unable to pay its debts; or

(iii) if the Court is of opinion that it is just and equitable that the company should be wound up;

(*d*) where the unregistered company is a foreign company, it may be wound up only if it has a substantial connection with Singapore.

(2) An unregistered company is deemed to be unable to pay its debts if —

(*a*) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $15,000 then due has served on the company —

(i) by leaving at its principal place of business in Singapore;

(ii) by delivering to the secretary or a director, manager or principal officer of the company; or

(iii) by otherwise serving in such manner as the Court approves or directs,

a demand under his or her hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(*b*) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from the member in his or her character of member, and, notice in writing of the institution of the action or proceeding having been served on the company —

(i) by leaving it at its principal place of business in Singapore;

(ii) by delivering it to the secretary or a director, manager or principal officer of the company; or

(iii) by otherwise serving it in such manner as the Court approves or directs,

the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to the reasonable satisfaction of the defendant against the action or proceeding and against all costs, damages and expenses to be incurred by the defendant by reason of the action or proceeding;

(*c*) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member of the company as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied; or

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

(3) For the purposes of subsection (1)(*d*), the Court may rely on the presence of one or more of the following matters to support a determination that a foreign company has a substantial connection with Singapore:

(*a*) Singapore is the centre of main interests of the company;

(*b*) the company is carrying on business in Singapore or has a place of business in Singapore;

(*c*) the company is a foreign company that is registered under Division 2 of Part XI of the Companies Act;

(*d*) the company has substantial assets in Singapore;

(*e*) the company has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction;

(*f*) the company has submitted to the jurisdiction of the Court for the resolution of one or more disputes relating to a loan or other transaction.

(4) A company incorporated outside Singapore may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated.

(5) The Minister may, by order, amend subsection (2)(*a*) by substituting a different sum for the sum for the time being specified in that provision.

(6) In this section, "carrying on business" and "to carry on business" have the same meaning as in section 366 of the Companies Act.

Contributories in winding up of unregistered company

247.—(1) On an unregistered company being wound up, every person is a contributory —

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

(i) any debt or liability of the company;

(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 company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

and every contributory is liable to contribute to the assets of the company all sums due from him or her in respect of any such liability.

(2) On the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively apply.

Power of Court to stay or restrain proceedings

248.—(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the making of an application for winding up and before the making of a winding up order extend, in the case of an unregistered company where the application to stay or restrain is by a creditor, to actions and proceedings against any contributory of the company.

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

Outstanding assets of defunct unregistered company

249.—(1) Where an unregistered company the place of incorporation or origin of which is in a designated country has been dissolved and there remains in Singapore any outstanding property, movable or immovable, including things in action —

(*a*) which was vested in the company;

(*b*) to which the company was entitled; or

(*c*) over which the company had a disposing power,

at the time the company was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, by the operation of this section, vests and becomes vested, for all the estate and interest in such property legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled to such property according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Singapore, sections 212 to 216, with such adaptations as may be necessary, apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to this section, the Minister

may, by notification in the *Gazette*, declare that other country to be a designated country for the purposes of this section.

Division 2 — Liquidation or dissolution of foreign companies

Liquidation, dissolution, etc., of foreign company in its place of incorporation

250.—(1) This section applies to a foreign company which, whether or not it is registered under Division 2 of Part XI of the Companies Act, establishes a place of business or carries on business in Singapore.

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin, the Court may, on the application of the person who is the liquidator of the foreign company for the foreign company's place of incorporation or the application of the Official Receiver, appoint a liquidator of the foreign company for Singapore.

(3) A liquidator of a foreign company appointed for Singapore by the Court —

(*a*) must, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time prior to the distribution;

(*b*) subject to subsection (6), must not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company; and

(*c*) must, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and, subject to paragraph (*b*) and subsection (6) —

(i) in a case where the foreign company is, or was prior to the liquidation or dissolution carrying on business as, a relevant company, pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or

incorporated after paying any debts and satisfying any liabilities incurred in Singapore by the foreign company; or

(ii) in any other case, pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated.

(4) Where a foreign company has been wound up so far as its assets in Singapore are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered pursuant to subsection (3).

(5) A liquidator of a foreign company appointed for Singapore by the Court must, before paying any amount so recovered and realised in Singapore to the liquidator of that foreign company for the place where it was formed or incorporated, be satisfied that the interests of creditors in Singapore are adequately protected.

(6) Section 203 applies to a foreign company wound up or dissolved pursuant to this section as if each reference to a company in that provision were substituted with a reference to a foreign company.

(7) In this section —

"carrying on business" has the meaning given by section 366 of the Companies Act;

"relevant company" means a foreign company that is any of the following:

(*a*) a banking corporation;

(*b*) a merchant bank, or any other financial institution, approved under section 28 of the Monetary Authority of Singapore Act;

(*c*) a finance company licensed under section 6 of the Finance Companies Act;

(*d*) a person licensed to carry on a remittance business under section 8 of the Money-changing and Remittance Businesses Act;

(*e*) a licensed insurer licensed under section 8 of the Insurance Act;

(*f*) a recognised market operator as defined in section 2(1) of the Securities and Futures Act;

(*g*) a licensed foreign trade repository as defined in section 2(1) of the Securities and Futures Act;

(*h*) a recognised clearing house as defined in section 2(1) of the Securities and Futures Act;

(*i*) an approved holding company as defined in section 2(1) of the Securities and Futures Act;

(*j*) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act that does not only carry on the business of providing credit rating services;

(*k*) a Registered Fund Management Company as defined in the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10);

(*l*) a financial adviser licensed under section 13 of the Financial Advisers Act (Cap. 110);

(*m*) a licensed trust company licensed under section 5 of the Trust Companies Act (Cap. 336);

(*n*) an operator of a designated payment system designated under section 7 of the Payment Systems (Oversight) Act (Cap. 222A);

(*o*) an approved holder of a widely accepted stored value facility approved under section 35 of the Payment Systems (Oversight) Act.

PART 11

CROSS-BORDER INSOLVENCY

Interpretation of this Part

251. In this Part, "Model Law" means the UNCITRAL Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997.

Model Law to have force of law

252.—(1) The Model Law (with certain modifications to adapt it for application in Singapore) as set out in the Third Schedule has the force of law in Singapore.

(2) In the interpretation of any provision of the Third Schedule, the following documents are relevant documents for the purposes of section 9A(3)(*f*) of the Interpretation Act (Cap. 1):

(*a*) any document relating to the Model Law that is issued by, or that forms part of the record on the preparation of the Model Law maintained by, the United Nations Commission on International Trade Law and its working group for the preparation of the Model Law;

(*b*) the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (UN document A/CN.9/442).

Interaction with Singapore insolvency law

253.—(1) Singapore insolvency law applies with such modifications as the context requires for the purpose of giving effect to this Part and the Third Schedule.

(2) This Part and the Third Schedule do not derogate from the operation of section 250.

(3) In this section, "Singapore insolvency law" has the same meaning as in Article 2(*k*) of the Third Schedule.

PART 12

GENERAL PROVISIONS APPLICABLE TO PARTS 4 TO 11

Registers, etc.

254.—(1) The Registrar of Companies must, subject to Parts 4 to 11, keep such registers as the Registrar of Companies considers necessary in such form as the Registrar of Companies thinks fit.

(2) Any person may, on payment of the prescribed fee, inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar of Companies.

(3) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar of Companies using a non-electronic medium that is certified to be a true copy or extract by the Registrar of Companies is in any proceedings admissible in evidence as of equal validity with the original document.

(4) In any legal proceedings, a certificate issued by the Registrar of Companies that a requirement of Parts 4 to 11 specified in the certificate —

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(5) If the Registrar of Companies is of the opinion that any document submitted to the Registrar of Companies —

(*a*) contains any matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of Parts 4 to 11; or

(*d*) contains any error, alteration or erasure,

the Registrar of Companies may refuse to register or receive the document and request that the document be appropriately amended or

completed and resubmitted or that a fresh document be submitted in its place.

(6) If the Registrar of Companies is of the opinion that it is no longer necessary or desirable to retain any document lodged, filed or registered with the Registrar of Companies and which has been microfilmed or converted to electronic form, the Registrar of Companies may —

(*a*) destroy the document with the authorisation of the National Library Board under section 14D of the National Library Board Act (Cap. 197); or

(*b*) transfer the document to the National Archives of Singapore under section 14C of that Act.

(7) In subsection (3), "non-electronic medium" means a medium other than the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

Electronic transaction system

255.—(1) The Registrar of Companies may —

(*a*) require or permit any person to carry out any transaction with the Registrar of Companies under Parts 4 to 11; and

(*b*) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction mentioned in paragraph (*a*),

using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act.

(2) If the Registrar of Companies is satisfied that a transaction should be treated as having been carried out at some earlier date and time, than the date and time which is reflected in the electronic transaction system, the Registrar of Companies may cause the electronic transaction system and the registers kept by the Registrar of Companies to reflect such earlier date and time.

(3) The Registrar of Companies must keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

(4) In this section —

"document" includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to the Registrar of Companies;

"transaction", in relation to the Registrar of Companies, means —

(*a*) the filing or lodging of any document with the Registrar of Companies, or the submission, production, delivery, furnishing or sending of any document to the Registrar of Companies;

(*b*) any making of any application, submission or request to the Registrar of Companies;

(*c*) any provision of any undertaking or declaration to the Registrar of Companies; and

(*d*) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar of Companies.

Rectification by High Court

256.—(1) Where it appears to the Court, as a result of evidence adduced before it by an applicant company, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar of Companies to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar of Companies must, upon receipt of the order, rectify the register accordingly.

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, must be filed by the applicant company with the Registrar of Companies together with a copy of the Court order, and a copy of the Court application.

Rectification by Registrar of Companies on application

257.—(1) Despite section 256, an officer of a company may notify the Registrar of Companies in the prescribed form of —

(*a*) any error contained in any document relating to the company filed or lodged with the Registrar of Companies; or

(*b*) any error in the filing or lodgment of any document relating to the company with the Registrar of Companies.

(2) The Registrar of Companies may, upon receipt of any notification mentioned in subsection (1) and if satisfied that —

(*a*) the error mentioned in subsection (1)(*a*) is typographical or clerical in nature; or

(*b*) the error mentioned in subsection (1)(*b*) is, in the opinion of the Registrar of Companies, unintended and does not prejudice any person,

rectify the register accordingly.

(3) In rectifying the register under subsection (2), the Registrar of Companies must not expunge any document from the register.

(4) The decision made by the Registrar of Companies on whether to rectify the register under subsection (2) is final.

Rectification or updating on initiative of Registrar of Companies

258.—(1) The Registrar of Companies may rectify or update any particulars or document in a register kept by the Registrar of Companies, if the Registrar of Companies is satisfied that —

(*a*) there is a defect or error in the particulars or document arising from any grammatical, typographical or similar mistake; or

(*b*) there is evidence of a conflict between the particulars of a company or person and —

(i) other information in the register relating to that company or person; or

(ii) other information relating to that company or person obtained from such department or Ministry of the Government, or statutory body or other body corporate as may be prescribed.

(2) Before the Registrar of Companies rectifies or updates the register under subsection (1), the Registrar of Companies must, except under prescribed circumstances, give written notice to the company or person whose documents or particulars are to be rectified or updated of the Registrar of Companies' intention to do so, and state in the notice —

(*a*) the reasons for and details of the proposed rectification or updating to be made to the register; and

(*b*) the date by which any written objection to the proposed rectification or updating must be delivered to the Registrar of Companies, being a date at least 30 days after the date of the notice.

(3) The company or person notified under subsection (2) may deliver to the Registrar of Companies, not later than the date specified under subsection (2)(*b*), a written objection to the proposed rectification or updating of the register.

(4) The Registrar of Companies must not rectify or update the register if the Registrar of Companies receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(*b*), unless the Registrar of Companies is satisfied that the objection is frivolous or vexatious or has been withdrawn.

(5) The Registrar of Companies may rectify or update the register if the Registrar of Companies does not receive a written objection under subsection (3) by the date specified under subsection (2)(*b*).

(6) The Registrar of Companies may include such notation as the Registrar of Companies thinks fit on the register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Registrar of Companies is satisfied that it no longer serves any useful purpose.

(7) Despite anything in this section, the Registrar of Companies may, if the Registrar of Companies is satisfied that there is any error or defect in any particulars or document in a register, by notice in writing, request that the company to which the particulars or document relate, or its officers take such steps within such time as the Registrar of Companies may specify to ensure that the error or defect is rectified.

Enforcement of duty to make returns

259.—(1) If a corporation or person, having defaulted in complying with —

(*a*) any provision of Parts 4 to 11 or of any other law that requires the filing or lodgment in any manner with the Official Receiver of any return, account or other document or the giving of notice to the Official Receiver of any matter;

(*b*) any provision of Parts 4 to 11 that requires the filing or lodgment in any manner with the Registrar of Companies of any return, account or other document or the giving of notice to the Registrar of Companies of any matter;

(*c*) any request of the Registrar of Companies or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document; or

(*d*) any request of the Registrar of Companies under section 258(7) to rectify any error or defect in any particulars or document in the register,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar of Companies or the Official Receiver, make an order directing the corporation and any officer of the corporation or such person to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application must be borne by the corporation

or by any officer of the corporation responsible for the default or by the person in default.

(3) Nothing in this section limits the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default.

Relodging of lost registered documents

260.—(1) If any document filed or lodged with the Registrar of Companies under Parts 4 to 11 has been lost or destroyed, the corporation may apply to the Registrar of Companies for leave to lodge a copy of the document as originally filed or lodged.

(2) On an application under subsection (1) being made, the Registrar of Companies may direct notice of the application to be given to such persons and in such manner as the Registrar of Companies thinks fit.

(3) The Registrar of Companies upon being satisfied —

(*a*) that the original document has been lost or destroyed;

(*b*) of the date of the filing or lodging of the original document with the Registrar of Companies; and

(*c*) that a copy of such document produced to the Registrar of Companies is a correct copy,

may certify upon that copy that the Registrar of Companies is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment, that copy for all purposes has, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar of Companies, the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate.

(6) An order under subsection (5) may be lodged with the Registrar of Companies and if lodged, must be registered by the Registrar of Companies.

(7) No payment, contract, dealing, act or thing made, had or done in good faith before the registration of an order under subsection (5) and upon the faith of and in reliance upon the certificate is to be invalidated or affected by such variation or rescission.

(8) No fee is payable upon the lodging of a document under this section.

Size, durability and legibility of documents delivered to Registrar of Companies

261.—(1) For the purposes of securing that the documents delivered to the Registrar of Companies under the provisions of Parts 4 to 11 are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as the Minister may consider appropriate and different requirements may be prescribed for different documents or classes of documents.

(2) If under any provision of Parts 4 to 11, there is delivered to the Registrar of Companies a document (whether an original document or a copy) which in the opinion of the Registrar of Companies does not comply with the requirements prescribed under this section that are applicable to it, the Registrar of Companies may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating the Registrar of Companies' opinion to that effect and indicating the prescribed requirements with which in the Registrar of Companies' opinion the document does not comply.

(3) Where the Registrar of Companies serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar of Companies a document required to be delivered under that provision (and, in particular, for the purposes of any such law under which such a penalty may be imposed by reference to each day during which the omission continues) —

(*a*) any duty imposed by that provision to deliver such a document to the Registrar of Companies is to be treated as not having been discharged by the delivery of that document; but

(*b*) no account is to be taken of any days falling within the period specified in subsection (4).

(4) The period mentioned in subsection (3)(*b*) is the period beginning on the day on which the document was delivered to the Registrar of Companies as mentioned in subsection (2) and ending on the fourteenth day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

(5) In this section, any reference to delivering a document is to be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

False and misleading statement

262. Any person who, for any purpose under Parts 4 to 11 —

(*a*) lodges or files with or submits to the Registrar of Companies any document; or

(*b*) authorises another person to lodge or file with or submit to the Registrar of Companies any document,

knowing that document to be false or misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

Power to grant relief

263.—(1) If, in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach, but that the person has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve

the person either wholly or partly from his or her liability on such terms as the court thinks fit.

(2) To avoid doubt and without limiting subsection (1), in subsection (1), "liability" includes the liability of a person to whom this section applies to account for profits made or received.

(3) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust, he or she may apply to the Court for relief, and the Court has the same power to relieve him or her as under this section it would have had if it had been a court before which proceedings against him or her for negligence, default, breach of duty or breach of trust had been brought.

(4) The persons to whom this section applies are —

(*a*) any officer of a corporation;

(*b*) any person employed by a corporation as an auditor, whether the person is or is not an officer of the corporation; and

(*c*) any person who is a receiver, receiver and manager, judicial manager or liquidator appointed or directed by the Court to carry out any duty under Parts 4 to 11 in relation to a corporation and every other person so appointed or so directed.

Irregularities

264.—(1) In this section, unless the contrary intention appears, a reference to a procedural irregularity includes a reference to —

(*a*) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(*b*) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under Parts 4 to 11 is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the

irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of Parts 4 to 11, or a meeting notice of which is required to be given in accordance with the provisions of Parts 4 to 11, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting, the Official Receiver or the Registrar of Companies, declares proceedings at the meeting to be void.

(4) Subject to subsections (5) and (6) and without limiting any other provision of Parts 4 to 11, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(*a*) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under Parts 4 to 11 or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of Parts 4 to 11 or a provision of any of the constituent documents of a corporation;

(*b*) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (*a*);

(*c*) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under Parts 4 to 11 or in relation to a corporation (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under subsection (4)(*a*) or (*b*) even though the contravention or failure mentioned in subsection (4)(*a*) resulted in the commission of an offence.

(6) The Court must not make an order under this section unless it is satisfied —

(*a*) in the case of an order mentioned in subsection (4)(*a*) —

(i) that the act, matter or thing, or the proceeding, mentioned in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made;

(*b*) in the case of an order mentioned in subsection (4)(*b*), that the person subject to the civil liability concerned acted honestly; and

(*c*) in every case, that no substantial injustice has been or is likely to be caused to any person.

Translations of instruments, etc.

265.—(1) Where under Parts 4 to 11 a corporation is required to lodge with the Registrar of Companies or the Official Receiver any instrument, certificate, contract or document or a certified copy of any instrument, certificate, contract or document and the instrument, certificate, contract or document is not written in the English language, the corporation must lodge at the same time with the Registrar of Companies or the Official Receiver (as the case may be) a certified translation of the instrument, certificate, contract or document in the English language.

(2) Where under Parts 4 to 11 a corporation is required to make available for public inspection any instrument, certificate, contract or document and the instrument, certificate, contract or document is not written in the English language, the corporation must keep at its registered office in Singapore a certified translation of the instrument, certificate, contract or document in the English language.

(3) Where any accounts, financial statements, minute books or other records of a corporation required by Parts 4 to 11 to be kept are not kept in the English language, the directors of the corporation must cause a true translation of such accounts, financial statements, minute books and other records to be made from time to time at intervals of not more than 7 days and must cause such translations to be kept with the original accounts, financial statements, minute books and other records for so long as the original accounts, financial statements, minute books and other records are required by Parts 4 to 11 to be kept.

General penalty provisions

266.—(1) A person who —

(*a*) does that which under Parts 4 to 11 the person is forbidden to do;

(*b*) does not do that which under Parts 4 to 11 the person is required or directed to do; or

(*c*) otherwise contravenes or fails to comply with any provision of Parts 4 to 11,

shall be guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) or Parts 4 to 11 shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding $1,000.

(3) Every summons issued for an offence committed by an officer of a company or other person under subsection (1) or Parts 4 to 11 or any regulations may, despite anything in this Act, be served —

(*a*) by delivering it to him or her;

(*b*) by delivering it to any adult person residing at his or her last known place of residence or employed at his or her last known place of business; or

(*c*) by forwarding it by registered post in a cover addressed to him or her at his or her last known place of residence or business or at any address furnished by him or her.

(4) In proving service by registered post, it is sufficient to prove that the registered cover containing the summons was duly addressed and posted.

Default penalties

267.—(1) Where a default penalty is provided in any section of Parts 4 to 11, any person who is convicted of an offence under Parts 4 to 11 or who has been dealt with under section 271 for an offence under Parts 4 to 11 in relation to that section shall be guilty of a further offence under this Act if the offence continues after the person is so convicted or after the person has been so dealt with and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section as the amount of the default penalty or, if an amount is not so expressed, of not more than $200.

(2) Where any offence is committed by a person by reason of the person's failure to comply with any provision of Parts 4 to 11 under which the person is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), is deemed to continue so long as the thing so required or directed to be done by him or her remains undone, despite such period having elapsed.

(3) For the purposes of any provision of Parts 4 to 11 which provides that an officer of a company or corporation who is in default is guilty of an offence under Parts 4 to 11 or is liable to a penalty or punishment, the phrase "officer who defaults" or any like phrase means any officer of the company or corporation who knowingly and wilfully —

(*a*) is guilty of the offence; or

(*b*) authorises or permits the commission of the offence.

Powers of enforcement

268.—(1) For the purposes of investigating any offence under this Part or Parts 4 to 11, an enforcement officer may —

(*a*) require any person whom the enforcement officer reasonably believes to have committed that offence to furnish evidence of the person's identity;

(*b*) require any person to furnish any information or produce any book or document, or any copy of a book or document, in the possession of that person, and may, without fee or reward, inspect, make copies of or take extracts from such book or document;

(*c*) require, by order in writing, the attendance before the enforcement officer of any person within the limits of Singapore who, from any information given or otherwise obtained by the enforcement officer, appears to be acquainted with the circumstances of the case;

(*d*) examine orally any person reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the enforcement officer may specify, and reduce into writing the answer given or statement made by that person;

(*e*) take such photographs or video recordings, as the enforcement officer thinks necessary, of —

(i) the premises in which or in connection with which the enforcement officer reasonably believes an offence has been committed; and

(ii) the persons reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the enforcement officer may specify; and

(*f*) require the owner or occupier of any premises in which or in connection with which the enforcement officer reasonably believes an offence has been committed, to

give the enforcement officer access to such premises without charge for the purpose of investigating that offence.

(2) The person mentioned in subsection (1)(*d*) is bound to state truly what the person knows of the facts and circumstances with which the person is acquainted, except that the person need not say anything that might expose the person to a criminal charge, penalty or forfeiture.

(3) A statement made by the person mentioned in subsection (2) must —

(*a*) be reduced to writing;

(*b*) be read over to that person;

(*c*) if that person does not understand English, be interpreted in a language which that person understands; and

(*d*) after correction, if necessary, be signed by that person.

(4) An enforcement officer when exercising any power under this section must —

(*a*) declare the office of the enforcement officer; and

(*b*) produce to the person against whom the enforcement officer is acting, such identification card as the Minister may direct to be carried by an enforcement officer exercising powers under this section.

(5) Any person who, without reasonable excuse —

(*a*) refuses to give access to, or assaults, obstructs, hinders or delays, an enforcement officer in the discharge of the enforcement officer's duties under this section;

(*b*) wilfully mis-states or without lawful excuse refuses to give any information or produce any book or document, or any copy of a book or document, required of that person by an enforcement officer under subsection (1); or

(*c*) fails to comply with a lawful demand of an enforcement officer in the discharge by the enforcement officer of the enforcement officer's duties under this section,

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

(6) The Official Receiver may authorise either generally or specifically the Registrar of Companies, or one or more officers of the Registrar of Companies, to exercise all or any of the powers in subsection (1) for the purposes of investigating any offence under this Part or Parts 4 to 11, and for the purposes of such authorisation —

(*a*) any reference to an enforcement officer in subsections (1), (4) and (5) is to be read as a reference to the Registrar of Companies, or an officer of the Registrar of Companies, so authorised; and

(*b*) the reference to the Minister in subsection (4)(*b*) is to be read as a reference to the Chief Executive of the Accounting and Corporate Regulatory Authority appointed under section 10 of the Accounting and Corporate Regulatory Authority of Singapore Act.

(7) In this section, "enforcement officer" means the Official Receiver or any officer of the Official Receiver authorised by the Official Receiver.

Proceedings how and when taken

269.—(1) Except where provision is otherwise made in this Act, proceedings for any offence under this Part or Parts 4 to 11 may, with the authorisation of the Public Prosecutor, be taken —

(*a*) by the Registrar of Companies or the Official Receiver; or

(*b*) with the written consent of the Minister, by any person.

(2) Proceedings for any offence under this Part or Parts 4 to 11, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate's Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(3) Any punishment authorised by this Part or Parts 4 to 11 may be imposed by a District Court, notwithstanding that it is a greater punishment than that court is otherwise empowered to impose.

(4) The Registrar of Companies, the Official Receiver and any officer authorised by the Registrar of Companies or the Official Receiver in writing have the right to appear and be heard before a Magistrate's Court or a District Court in any proceedings for an offence under this Part or Parts 4 to 11.

Injunctions

270.—(1) Where a person (*A*) has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of Parts 4 to 11, the Court may, on the application of —

(*a*) the Official Receiver; or

(*b*) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining *A* from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring *A* to do any act or thing.

(2) Where a person (*A*) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that *A* is required by Parts 4 to 11 to do, the Court may, on the application of —

(*a*) the Official Receiver; or

(*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring *A* to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a

particular kind, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(7) Where the Official Receiver makes an application to the Court for the grant of an injunction under this section, the Court must not require the Official Receiver or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in a particular conduct, or requiring a person to do a particular act or thing, the Court may,

either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Composition of offences

271.—(1) The Official Receiver may, in his or her discretion, compound any offence under this Part or Parts 4 to 11 that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(*a*) one half of the amount of the maximum fine that is prescribed for the offence;

(*b*) $5,000.

(2) The Official Receiver may, in his or her discretion, compound any offence under this Part or Parts 4 to 11 (including an offence under a provision that has been repealed) that —

(*a*) was compoundable under this Act at the time the offence was committed; but

(*b*) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(*c*) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;

(*d*) $5,000.

(3) The Official Receiver may authorise either generally or specifically the Registrar of Companies to compound —

(*a*) any offence under this Part or Parts 4 to 11 that is prescribed as a compoundable offence; and

(*b*) any offence under this Part or Parts 4 to 11 (including an offence under a provision that has been repealed) that —

(i) was compoundable under this Act at the time the offence was committed; but

(ii) has ceased to be so compoundable.

(4) If the Registrar of Companies is authorised by the Official Receiver under subsection (3), the Registrar of Companies may, in his or her discretion, compound an offence that he or she is authorised to compound by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(*a*) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;

(*b*) $5,000.

(5) On payment of such sum of money mentioned in subsection (1), (2) or (4), no further proceedings may be taken against that person in respect of the offence.

(6) All sums collected under this section must be paid into the Consolidated Fund.

Appeal

272.—(1) Any party aggrieved by an act or a decision of the Official Receiver under Parts 4 to 11 may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

(2) Any party aggrieved by an act or a decision of the Registrar of Companies under section 254, 255, 257, 258 or 261 may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

(3) The Court may confirm the act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

(4) This section does not apply to any act or decision of the Official Receiver —

(*a*) in respect of which any provision in the nature of an appeal or a review is expressly provided in this Act; or

(*b*) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

PART 13

BANKRUPTCY — PRELIMINARY

Interpretation of Parts 13 to 21

273.—(1) In this Part and Parts 14 to 21, unless the context otherwise requires —

"administration date" means —

(*a*) the date of submission by the bankrupt of the statement of the bankrupt's affairs; or

(*b*) where the bankrupt is directed by the Official Assignee under section 332(4)(*c*) to submit supplementary information, the date of submission of the supplementary information if later;

"bankruptcy application" means an application to the Court for a bankruptcy order;

"bankruptcy order" means an order adjudging a debtor bankrupt;

"creditor", in relation to a debtor proposing a voluntary arrangement under Part 14, means a creditor to whom the debtor owes a debt provable in bankruptcy;

"debt provable in bankruptcy" or "provable debt" means any debt or liability that is made provable in bankruptcy under this Act;

"debtor" —

(*a*) in relation to a proposal for a voluntary arrangement under Part 14, means the individual or the firm making or intending to make that proposal and includes each of the partners in such firm; and

(*b*) in relation to a bankruptcy application, means the individual debtor to whom, or a firm, or each of the partners in the firm, to which, the application relates;

"debtor's bankruptcy application" means a bankruptcy application made under section 308 by a debtor against

himself, herself or itself or by all or a majority of the partners of a firm against the firm;

"estate", in relation to a bankrupt, is to be construed in accordance with section 329;

"family", in relation to a bankrupt, means the persons (if any) who are living with and dependent on the bankrupt;

"firm" means an unincorporated body of individuals carrying on business in partnership with a view to profit;

"gazetted" means published in the *Gazette*;

"goods" includes all chattels personal;

"income" includes all income, whether or not accruing in or derived from Singapore, and whether received in Singapore or elsewhere;

"judgment debt" means a debt which is payable by any person by virtue of a judgment or an order of court against the person;

"monthly contribution" means —

(*a*) the amount, determined in accordance with section 339, that a bankrupt is required, under section 371, to pay to the Official Assignee on a monthly basis out of the bankrupt's income; or

(*b*) if the amount mentioned in paragraph (*a*) is varied by the Court under section 340(5)(*a*), 341(1) or 343(4)(*a*) or reduced by the Official Assignee under section 342(1) or 344(3), that amount as varied or reduced, as the case may be;

"nominee" means the person appointed by virtue of a debtor's proposal for a voluntary arrangement under Part 14 to act as trustee or otherwise to supervise the implementation of the voluntary arrangement and includes —

(*a*) any replacement of such person pursuant to a direction under section 280(3)(*a*) or an order under section 286(5); and

(*b*) any person upon whom the functions of the nominee have been conferred by a creditors' meeting pursuant to section 282(3);

"ordinary resolution" means a resolution passed by a majority in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution;

"partnership debt" means a debt for which all the partners in a firm are jointly liable;

"preferential debt" means any debt which is to be paid in priority to all other unsecured debts and which is specified in section 352, and any reference to a preferential creditor is to be construed accordingly;

"records" includes computer records and other documentary records;

"secured creditor", in relation to a debtor, means a person holding a mortgage, pledge, charge, lien or other security on or against the property of the debtor or any part of such property as security for a debt due to the person from the debtor;

"Sheriff" includes a bailiff and any officer charged with the execution of any writ or other process of the Court;

"special resolution" means a resolution passed by a majority in number and at least three-fourths in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution;

"statutory demand" means a demand in the prescribed form which requires the person to whom it is addressed to pay, secure or compound to the reasonable satisfaction of the creditor making the demand, any debt owed by the person to the creditor;

"supplementary information" means the supplementary information that a bankrupt is directed to submit under section 332(4)(*c*);

"target contribution" means —

(*a*) an amount equal to —

(i) in any case where the bankruptcy is a repeat bankruptcy, 76 payments of monthly contributions determined in accordance with section 339; or

(ii) in any other case, 52 payments of monthly contributions determined in accordance with section 339; or

(*b*) if the amount referred to in paragraph (*a*) is varied by the Court under section 340(5)(*a*), 341(1) or 343(4)(*a*) or reduced by the Official Assignee under section 342(1) or 344(3), that amount as varied or reduced, as the case may be.

(2) Any reference in this Part or Parts 14 to 21 to the person or property of a debtor or bankrupt, in relation to a debtor which is a firm or to a firm against which a bankruptcy order has been made (as the case may be) is to be read as a reference to the person or property of each partner of the firm.

(3) In this Part or Parts 14 to 21, unless the context otherwise requires, a bankruptcy is a repeat bankruptcy if, before the making of the bankruptcy order in respect of which the bankrupt was adjudged bankrupt, the bankrupt has been previously discharged from bankruptcy under this Act or any previous written law relating to bankruptcy.

Power of arrest and seizure

274.—(1) The Court may issue a warrant —

(*a*) for the arrest of a person against whom a bankruptcy application or bankruptcy order has been made; or

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

if the Court is satisfied, on an application of the Official Assignee, or that there are reasonable grounds for believing, that the person —

(*c*) has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of the person's debts or the person's appearance to a bankruptcy application or to avoiding, delaying or disrupting any proceedings in bankruptcy against the person or any examination of the person's affairs;

(*d*) is about to remove the person's goods with a view to preventing or delaying possession being taken of them by the Official Assignee;

(*e*) has concealed or destroyed, or is about to conceal or destroy, any of the person's goods or any books, papers or records which might be of use to the person's creditors in the course of the person's bankruptcy or in connection with the administration of the person's estate;

(*f*) has, without the leave of the Official Assignee, removed any goods in the person's possession which exceed the prescribed value; or

(*g*) has, without reasonable excuse, failed to attend any examination ordered by the Court.

(2) Where a person has been arrested under this section, the Court may —

(*a*) authorise the person to be kept in custody, in accordance with the Rules, until such time as the Court may order; or

(*b*) order the person's release, either with or without security to the satisfaction of the Court that the person will abide by such conditions as the Court thinks fit to impose.

(3) The Court may authorise anything seized under a warrant issued under subsection (1) to be held in accordance with the Rules, until such time as the Court may order.

(4) The proceeds of the realisation of any security given on breach by any person of any of the conditions of the security mentioned in subsection (2) are deemed to be the person's property and vest in the Official Assignee where the person is an undischarged bankrupt or,

where the person is not an undischarged bankrupt, in the event of the person's bankruptcy.

PART 14

VOLUNTARY ARRANGEMENTS

Division 1 — Moratorium for insolvent debtor

This Part not applicable to undischarged bankrupts

275. This Part does not apply —

(*a*) to any individual debtor who is an undischarged bankrupt; or

(*b*) to any firm against which a bankruptcy order has been made and from which bankruptcy the partners in the firm have not been discharged.

Interim order of Court

276.—(1) Subject to subsection (2), any insolvent debtor who intends to make a proposal to the insolvent debtor's creditors for a composition in satisfaction of the insolvent debtor's debts or a scheme of arrangement of the insolvent debtor's affairs (called in this Part a voluntary arrangement) may apply to the Court for an interim order under this Part.

(2) No partner in an insolvent firm may apply to the Court for an interim order in respect of the firm unless all or a majority of the partners in the firm join or intend to join in the making of the proposal for a voluntary arrangement.

(3) During the period for which an interim order is in force —

(*a*) where the interim order is in respect of an individual debtor —

(i) no bankruptcy application may be made or proceeded with against the debtor; and

(ii) no other proceedings, execution or other legal process may be commenced or continued against

the person or property of the debtor without the leave of the Court; and

(*b*) where the interim order is in respect of a firm —

(i) no bankruptcy application may be made or proceeded with against the firm or, except with the leave of the Court, any partner in the firm; and

(ii) no other proceedings, execution or other legal process may be commenced or continued against the firm or its property or against the person or property of any partner in the firm, without the leave of the Court.

(4) An interim order ceases to have effect 42 days after the making of that interim order unless the Court otherwise directs.

Nominee

277.—(1) Every debtor making a proposal for the purpose of this Part must in such proposal appoint a nominee to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.

(2) No person may be appointed as a nominee unless that person is a licensed insolvency practitioner.

(3) The Minister may make regulations prescribing the scale of fees to be charged by nominees assisting debtors in respect of voluntary arrangements.

Effect of application

278.—(1) At any time when an application under section 276 for an interim order is pending, the Court may stay any action, execution or other legal process against the debtor in respect of whom the application has been made or against the property of such debtor.

(2) Any court in which proceedings are pending against a debtor may, on being satisfied that an application under section 276 for an interim order has been made in respect of the debtor, stay the proceedings or allow them to continue on such terms as the court may think fit.

(3) Where the debtor in respect of whom an application under section 276 for an interim order is pending is a firm, the power of the Court under subsection (1) and of the court under subsection (2) applies to any action, execution or other legal process or proceedings against the person or property of any partner in the firm.

Conditions for making of interim order

279.—(1) The Court must not make an interim order on an application under section 276 unless it is satisfied that —

(*a*) the debtor intends to make a proposal for a voluntary arrangement;

(*b*) no previous application for an interim order has been made by or in respect of the debtor during the period of 12 months immediately before the date of the application; and

(*c*) the nominee appointed by the debtor's proposal is qualified and willing to act in relation to the proposal.

(2) The Court may make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

Nominee's report on debtor's proposal

280.—(1) Where an interim order has been made, the nominee must, before the order ceases to have effect, submit a report to the Court stating —

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

(*b*) if in the opinion of the nominee such a meeting should be summoned, the date on which, and the time and place at which, the nominee proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare the report mentioned in subsection (1), the debtor must submit to the nominee —

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of the debtor's affairs containing —

(i) where the debtor is an individual, such particulars of his or her assets, creditors, debts and other liabilities as may be prescribed;

(ii) where the debtor is a firm, such particulars of the assets, creditors, debts and other liabilities of the firm and of each partner in the firm, as may be prescribed; and

(iii) such other information as may be prescribed.

(3) Where the nominee has failed to submit the report required by this section within the time given, the Court may, on an application made by the debtor, do one or both of the following:

(*a*) direct that the nominee be replaced by another person qualified to act as a nominee;

(*b*) direct that the interim order is to continue, or if it has ceased to have effect be renewed, for such further period as the Court thinks fit.

(4) The Court may, on the application of the nominee, extend the period for which the interim order has effect so as to allow the nominee to have more time to prepare the report mentioned in subsection (1).

(5) If the Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court must direct that the period for which the interim order has effect is extended for such further period as the Court thinks fit, for the purposes of enabling the debtor's proposal to be considered by the debtor's creditors, and the nominee to report to the Court the results of the meeting of the debtor's creditors, in accordance with sections 281 to 283.

(6) The Court may discharge the interim order if it is satisfied, on the application of the nominee —

(*a*) that the debtor has failed to comply with subsection (2); or

(*b*) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Summoning of creditors' meeting

281.—(1) Where a nominee has reported to the Court under section 280 that a meeting of the debtor's creditors should be summoned, the nominee must, unless the Court otherwise directs, summon that meeting in accordance with the nominee's report.

(2) The nominee must summon to the meeting every of the debtor's creditors of whose claim and address the nominee is aware.

Division 2 — Consideration and implementation of debtor's proposal

Decision of creditors' meeting

282.—(1) A creditors' meeting summoned under section 281 may, if the meeting thinks fit, by special resolution resolve to approve the proposed voluntary arrangement, whether with or without modification.

(2) The creditors' meeting must not approve the proposed voluntary arrangement with any modification unless the debtor has consented to such modification.

(3) For the purpose of this section, a modification subject to which a proposed voluntary arrangement may be approved by a creditors' meeting may confer the functions proposed to be conferred on the nominee on another person qualified to act as a nominee.

(4) No modification under subsection (3) may alter the proposal to such an extent that it ceases to be a proposal for a voluntary arrangement by the debtor.

(5) The creditors' meeting must not approve any proposal or any modification to the proposal which affects the right of a secured creditor of the debtor to enforce the secured creditor's security, except with the concurrence of the secured creditor.

(6) The creditors' meeting must not, without the concurrence of the preferential creditor in question, approve any proposal or any modification of the proposal under which —

(*a*) any debt of the debtor, not being a preferential debt, is to be paid in priority to any preferential debt of the debtor; or

(*b*) the priority of payment of any preferential debt of the debtor, in relation to any other preferential debt of the debtor, is not in accordance with section 352.

(7) Every creditors' meeting must be conducted in accordance with the prescribed regulations.

(8) Any debtor who makes any false representation or commits any other fraud for the purpose of obtaining the approval of the debtor's creditors to a proposal for a voluntary arrangement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

Report of decisions to Court

283.—(1) After the conclusion of the creditors' meeting summoned under section 281, the nominee must report the result of the meeting to the Court and serve a copy of the report on such persons as may be prescribed.

(2) Where the creditors' meeting has declined to approve the debtor's proposal, the Court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

284.—(1) Where the creditors' meeting summoned under section 281 has approved the proposed voluntary arrangement, with or without modifications, the approved arrangement —

(*a*) takes effect as if made by the debtor at the meeting; and

(*b*) binds every person who had notice of and was entitled to vote at the meeting, whether or not the person was present or represented at the meeting, as if the person were a party to the arrangement.

(2) Subject to section 285, the interim order in force in relation to the debtor ceases to have effect at the end of 28 days after the date the report was made to the Court under section 283.

(3) Where proceedings on a bankruptcy application have been stayed by an interim order which ceases to have effect under subsection (2), that application is, unless the Court otherwise orders, deemed to have been dismissed.

Review of decision of creditors' meeting

285.—(1) Any debtor, nominee or person entitled to vote at a creditors' meeting summoned under section 281 may apply to the Court for a review of the decision of the meeting on the ground that —

(*a*) the voluntary arrangement approved by the meeting unfairly prejudices the interests of the debtor or any of the debtor's creditors; or

(*b*) there has been some material irregularity at or in relation to the meeting.

(2) Upon hearing an application under subsection (1), the Court may, if it thinks fit, do one or both of the following:

(*a*) revoke or suspend any approval given by the creditors' meeting;

(*b*) direct any person to summon a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within subsection (1)(*b*), to reconsider the original proposal of the debtor.

(3) No application under this section may be made after the end of 28 days after the date the report was made to the Court under section 283.

(4) Where at any time after giving a direction under subsection (2)(*b*) for the summoning of a further meeting to consider a revised proposal, the Court is satisfied that the debtor does not intend to submit such a proposal, the Court must revoke the direction and revoke or suspend any approval given at the previous meeting.

(5) Upon giving a direction under subsection (2)(*b*), the Court may, if it thinks just, extend the validity of any interim order in relation to the debtor for such period as the Court thinks fit.

(6) Upon giving a direction or revoking or suspending an approval under this section, the Court may give such supplemental directions as the Court thinks fit and, in particular, directions with respect to —

(*a*) things done since the meeting under any voluntary arrangement approved by the meeting; and

(*b*) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(7) Except pursuant to this section, no approval given at a creditors' meeting summoned under section 281 is to be invalidated by reason only of any irregularity at or in relation to the meeting.

Implementation and supervision of approved voluntary arrangement

286.—(1) Where a voluntary arrangement approved by a creditors' meeting summoned under section 281 has taken effect, the nominee must supervise the implementation of the voluntary arrangement.

(2) If the debtor or any of the debtor's creditors is dissatisfied by any act, omission or decision of the nominee in the nominee's supervision of the implementation of the voluntary arrangement, the debtor or creditor may apply to the Court to review that act, omission or decision.

(3) On hearing an application under subsection (2), the Court may —

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

(*b*) give such directions to the nominee or make such order as the Court thinks fit.

(4) The nominee may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The Court may, whenever —

(*a*) it is expedient to appoint a person to carry out the functions of the nominee; and

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

make an order appointing a person who is qualified to act as a nominee, either in substitution for the existing nominee or to fill a vacancy.

Consequence of failure by debtor to comply with voluntary arrangement

287. Where a debtor fails to comply with any of the debtor's obligations under a voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement may make a bankruptcy application against the debtor in accordance with Part 16.

PART 15

DEBT REPAYMENT SCHEME

Division 1 — Preliminary

Interpretation of this Part

288.—(1) In this Part, unless the context otherwise requires —

"Appeal Panel" means a panel established under section 304;

"applicant creditor", in relation to a debtor under a debt repayment scheme, means the creditor who makes the relevant bankruptcy application against the debtor;

"debt" means any debt, or any liability to pay money, that is unsecured, present, certain, and of an amount that is fixed or liquidated;

"debtor" means the individual to whom a debt repayment scheme applies under this Part;

"effective date", in relation to a debt repayment scheme, means the date on which the scheme commences under section 292(1);

"relevant bankruptcy application", in relation to a debtor under a debt repayment scheme, means the bankruptcy application adjourned by the Court under section 316(9) or 318(3) which enabled the Official Assignee to determine the debtor's suitability for the scheme and to implement the scheme;

"repayment period", in relation to a debt repayment plan, means the period of time, beginning with the date on which the plan comes into effect under section 291(8), that is allowed to a debtor under the plan to repay the debtor's debts included in the plan.

(2) For the purposes of this Part —

(*a*) any debt proved against a debtor under Division 2 before the effective date of a debt repayment scheme applicable to the debtor is, upon the effective date, deemed to have been proved under the scheme; and

(*b*) any claim, proof, declaration or statement filed, made or submitted by or in respect of a debtor under Division 2 before the effective date of a debt repayment scheme applicable to the debtor is, upon the effective date, deemed to have been filed, made or submitted under the scheme.

Division 2 — Proposal for debt repayment scheme

Referral by Court

289.—(1) Upon the Court adjourning a bankruptcy application made against a debtor and referring the matter to the Official Assignee under section 316(9) or 318(3), the Official Assignee must take such steps as are necessary to —

(*a*) review the suitability of the debtor for a debt repayment scheme; and

(*b*) where the debtor is suitable, implement the debt repayment scheme in accordance with this Part.

(2) The Official Assignee must report to the Court of the debtor's unsuitability for a debt repayment scheme if —

(*a*) the aggregate of the debtor's debts exceeds the prescribed amount;

(*b*) the debtor does not meet any of the qualifying criteria specified in paragraph (*b*), (*c*), (*d*) or (*e*) of section 316(9) or 318(3), as the case may be;

(*c*) the debtor, knowing or believing that a false or an inaccurate debt has been claimed by any person against the debtor under this Division, fails to inform the Official Assignee;

(*d*) the Official Assignee becomes aware of any circumstance mentioned in section 300(1)(*a*), (*b*), (*c*), (*d*), (*h*) or (*i*); or

(*e*) the Official Assignee is satisfied that the debtor is not suitable for a debt repayment scheme for any other reason.

(3) Subsection (2) ceases to apply upon the commencement of a debt repayment scheme in respect of the debtor under section 292(1).

Debtor's statement of affairs and proposal for repayment of debts, and creditors' proofs of debts

290.—(1) After the Court adjourns a bankruptcy application made against a debtor and refers the matter to the Official Assignee under section 316(9) or 318(3), the Official Assignee must, by notice in writing to the debtor, require the debtor to submit in such form and manner, and within such time, as may be specified by the Official Assignee in the notice —

(*a*) a statement of the debtor's affairs; and

(*b*) a debt repayment plan, with a repayment period not exceeding 5 years, setting out the terms for the repayment of the debtor's debts,

and the debtor must comply with the notice.

(2) After receiving the debtor's statement of affairs under subsection (1), the Official Assignee must send a notice to every creditor disclosed in the statement, requiring the creditor to file a proof

of debt within such time as may be specified by the Official Assignee in the notice.

(3) Section 294 applies to a proof of debt filed under this Division as if it is a proof of debt filed under a debt repayment scheme.

Approval of debt repayment plan

291.—(1) Subject to subsection (7), the Official Assignee must examine the statement of affairs and debt repayment plan submitted by a debtor under section 290(1) and the proofs of debts filed against the debtor and may make such modifications to the plan as the Official Assignee considers appropriate before convening a meeting of creditors under subsection (2).

(2) The Official Assignee must convene and preside at a meeting of creditors to review the debt repayment plan.

(3) Subject to subsection (7), the Official Assignee may, at or after the meeting of creditors, approve the debt repayment plan without any modification or subject to such, or such further, modifications as the Official Assignee considers appropriate.

(4) The debtor or any creditor who has proved a debt against the debtor under this Division may, within such time and in such manner as may be prescribed, appeal to the Appeal Panel against the Official Assignee's approval of the debt repayment plan under subsection (3) on the ground that the approved plan unfairly prejudices his or her interests.

(5) The Appeal Panel may determine the appeal by —

(*a*) confirming the Official Assignee's approval of the debt repayment plan; or

(*b*) subject to subsection (7), making such modifications to the plan as it considers appropriate,

and the decision of the Appeal Panel is final.

(6) Subject to section 296, the debt repayment plan approved by the Official Assignee or modified by the Appeal Panel under this section may require the debtor to make full repayment, or make such partial

repayment as may be specified in the plan, of the debts included in the plan.

(7) The repayment period under the debt repayment plan approved by the Official Assignee or modified by the Appeal Panel under this section must not exceed 5 years.

(8) The debt repayment plan comes into effect on such date as may be specified by the Official Assignee in the Official Assignee's approval of the plan under subsection (3) and is binding on —

(*a*) the debtor; and

(*b*) every creditor who has proved a debt against the debtor under this Division and whose debt is included in the plan.

(9) An appeal under subsection (4) does not suspend the commencement, operation or effect of a debt repayment scheme under this Part.

Division 3 — Commencement and administration of debt repayment scheme

Commencement and administration of debt repayment scheme

292.—(1) A debt repayment scheme commences in respect of a debtor on the date on which a debt repayment plan comes into effect under section 291(8) in respect of that debtor.

(2) The Official Assignee —

(*a*) must administer all debt repayment schemes under this Part; and

(*b*) may charge such fees as may be prescribed in respect of such administration.

(3) Upon the commencement of a debt repayment scheme in respect of a debtor, the Official Assignee must pay out from the Bankruptcy Estates Account and into the Debt Repayment Schemes Account the balance of any deposit paid by the applicant creditor to the Official Assignee in respect of the relevant bankruptcy application made against the debtor, for the purpose of discharging the costs and

expenses incurred by the Official Assignee in the administration of the scheme.

Moratorium under debt repayment scheme, etc.

293.—(1) Subject to subsection (2), during the period beginning on the effective date of a debt repayment scheme applicable to a debtor and ending on the date on which the scheme ceases under section 298(1) —

(*a*) no creditor to whom the debtor is indebted in respect of any debt provable under the scheme has any remedy against the person or property of the debtor in respect of that debt; and

(*b*) no action or proceedings may be proceeded with or commenced against the debtor in respect of that debt,

except by the leave of the Court and in accordance with such terms as the Court may impose.

(2) Subsection (1) does not affect the right of any secured creditor to realise or otherwise deal with the secured creditor's security in the same manner as the secured creditor would have been entitled to realise or deal with it if that subsection had not been enacted.

(3) Where the creditor of a debtor (to whom a debt repayment scheme applies) has issued execution against the goods or lands of the debtor, or has attached any debt due or property belonging to the debtor, the creditor is not entitled to retain the benefit of the execution or attachment against the debtor unless the creditor has completed the execution or attachment before the effective date of the scheme, except that —

(*a*) a person who purchases in good faith under a sale by the Sheriff any goods of the debtor on which an execution has been levied acquires in all cases a good title to them against the debtor; and

(*b*) the rights conferred by this subsection on the debtor may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(4) For the purposes of subsection (3) —

(*a*) an execution against goods is completed by seizure and sale;

(*b*) an attachment of a debt is completed by receipt of the debt; and

(*c*) an execution against land or any interest in land is completed by registering under any written law relating to the registration of land a writ of seizure and sale attaching the interest of the debtor in the land described in the writ of seizure and sale.

Proving of debts under debt repayment scheme

294.—(1) Subject to section 296, the following debts are provable under a debt repayment scheme in respect of a debtor:

(*a*) any debt to which the debtor is subject at the effective date of the scheme, and any interest on such debt which is payable by the debtor for any period before the effective date;

(*b*) any debt to which the debtor becomes subject after the effective date of the scheme but before the cessation of the scheme by reason of any obligation incurred before the effective date, and any interest on such debt which is payable by the debtor for any period before the effective date;

(*c*) any debt being the balance due from the debtor after the security in respect of a secured debt owing by the debtor at the effective date of the scheme is realised at any time before the cessation of the scheme.

(2) A creditor must file the creditor's proof of debt with the Official Assignee under this Part in such form and manner as may be prescribed.

(3) The Official Assignee must, in accordance with such regulations as may be prescribed, admit or reject, in whole or in part, any proof of debt filed under this Part.

(4) Any debtor or creditor who is dissatisfied with the Official Assignee's decision under subsection (3) may, within such time and in such manner as may be prescribed, appeal to the Court against the decision.

(5) The Court may, on hearing an appeal under subsection (4), confirm, reverse or vary the decision of the Official Assignee.

(6) An appeal under subsection (4) does not suspend the commencement, operation or effect of a debt repayment scheme under this Part.

Modification of debt repayment plan

295.—(1) Subject to subsection (6), the Official Assignee may at any time on or after the effective date of a debt repayment scheme, of his or her own volition or at the request of —

(*a*) the debtor to whom the scheme applies;

(*b*) a creditor who is bound by the debt repayment plan under the scheme; or

(*c*) a creditor, not being a creditor referred to in paragraph (*b*), who proves his or her debt under the scheme,

modify the plan in such manner as the Official Assignee considers appropriate.

(2) Before making any modification to the debt repayment plan, the Official Assignee must, by notice in writing to the debtor and all the creditors who have proved their debts under the debt repayment scheme, convene and preside at a meeting of creditors.

(3) Subject to subsection (6), the Official Assignee may, at or after the meeting of creditors, refuse to modify the debt repayment plan or may make such modifications to the plan as the Official Assignee considers appropriate.

(4) The debtor or any creditor who has proved a debt under the debt repayment scheme may, within such time and in such manner as may be prescribed, appeal to the Appeal Panel against the Official Assignee's decision under subsection (3) on the ground that the decision unfairly prejudices his or her interests.

(5) The Appeal Panel may determine the appeal by —

(*a*) confirming the Official Assignee's decision; or

(*b*) subject to subsection (6), making such or such further modifications to the debt repayment plan as it considers appropriate,

and the decision of the Appeal Panel is final.

(6) Subject to such further restrictions on the extension of the repayment period of a debt repayment plan as may be prescribed, any extension under this section of the repayment period of the plan is subject to the repayment period not exceeding at any time —

(*a*) where the plan includes a debt mentioned in section 294(1)(*b*) or (*c*), 7 years; or

(*b*) in any other case, 5 years.

(7) If a debt repayment plan is modified under this section, the modification takes effect on such date as may be specified by the Official Assignee in the Official Assignee's modification of the plan under subsection (3) and as from that date, the plan as modified is binding on —

(*a*) the debtor;

(*b*) every creditor who is bound by the plan before the modification; and

(*c*) where the plan is modified to include the debt of a creditor mentioned in subsection (1)(*c*), that creditor.

(8) An appeal under subsection (4) does not suspend the commencement, operation or effect of a debt repayment scheme under this Part.

Priority of debts and interest on debts

296.—(1) The following are to be paid under a debt repayment plan applicable to a debtor in priority to all other debts proved under the debt repayment scheme (to which the plan relates) and included in the plan:

(*a*) first, the costs and expenses incurred by the Official Assignee in the administration of the scheme;

(*b*) second, the costs (whether taxed or agreed) of the applicant creditor in respect of the relevant bankruptcy application made against the debtor;

(*c*) third, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating the conditions of employment of any employee;

(*d*) fourth, subject to subsection (2), the amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or award or agreement that regulates the conditions of employment, whether such amount becomes payable before, on or after the effective date of the scheme;

(*e*) fifth, all amounts due in respect of any work injury compensation under the Work Injury Compensation Act accrued before, on or after the effective date of the scheme;

(*f*) sixth, all amounts due in respect of contributions payable during a period of 12 consecutive months beginning not earlier than 12 months before, and ending not later than 12 months after, the effective date of the scheme, by the debtor as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act;

(*g*) seventh, subject to subsection (2), all remuneration payable to any employee in respect of vacation leave or, in the case of the employee's death, to any other person in the employee's right, accrued in respect of any period before, on or after the effective date of the scheme;

(*h*) eighth, the amount of all taxes assessed and any goods and services tax due under any written law on or before the effective date of the scheme;

(*i*) ninth, all premiums (including interest and penalties for late payment) and other sums payable in respect of the debtor's insurance cover under the MediShield Life Scheme mentioned in section 3 of the MediShield Life Scheme Act 2015 before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(*c*), (*d*) and (*g*) must not exceed such amount as the Minister may prescribe by order published in the *Gazette*.

(3) The debts in each class specified in subsection (1) rank in the order specified in subsection (1) but debts of the same class rank equally between themselves, and are to be paid in full, unless the amount standing to the credit of the debtor in the Debt Repayment Schemes Account is insufficient to meet them, in which case they abate in equal proportions between themselves.

(4) Where any payment has been made to any employee of the debtor on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced —

(*a*) has, under the debt repayment plan, a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority under this section has been diminished by reason of the payment; and

(*b*) has the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) Where a debt proved by a creditor under a debt repayment scheme includes interest, the interest is to be calculated —

(*a*) in a case where the rate of such interest was previously agreed or reserved, at the rate previously agreed or reserved; or

(*b*) in any other case, at the prescribed rate of interest.

(6) Interest on preferential debts ranks equally with interest on debts other than preferential debts.

(7) In this section —

"employee" means an individual who has entered into or works under a contract of service with the debtor and includes a subcontractor of labour;

"ex gratia payment" means an amount payable to an employee on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement;

"interest" includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called;

"preferential debt" means any debt specified in subsection (1);

"retrenchment benefit" means an amount payable to an employee on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement, or if no amount is so ascertainable, such amount as is determined by the Commissioner for Labour or by an Employment Claims Tribunal constituted under section 4 of the State Courts Act;

"wages or salary" includes —

(*a*) all arrears of money due to a subcontractor of labour;

(*b*) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, whether such amount becomes

payable before, on or after the effective date of the debt repayment scheme; and

(*c*) any amount payable to an employee, on termination of the employee's employment, as a gratuity under any contract of employment or any award or agreement that regulates the conditions of the employee's employment, whether such amount becomes payable before, on or after the effective date of the debt repayment scheme.

Payment and distribution of moneys under debt repayment scheme

297.—(1) A debtor to whom a debt repayment scheme applies must make all payments under the debtor's debt repayment plan to the Official Assignee.

(2) The Official Assignee may, from time to time, subject to the retention of such sums as may be necessary for the costs and expenses of the administration of the debt repayment scheme, and in accordance with section 296, the debt repayment plan and such regulations as may be prescribed, declare and distribute dividends amongst the creditors who have proved their debts under the scheme and whose debts are included in the plan.

(3) No action for a dividend lies against the Official Assignee.

(4) If the Official Assignee refuses to pay any dividend, the Court may, if it thinks fit, order the Official Assignee to pay the dividend, and also to pay out of the Consolidated Fund interest on the dividend for the period that the dividend is withheld and the costs of the application to the Court.

Division 4 — Cessation of debt repayment scheme

Cessation of debt repayment scheme

298.—(1) A debt repayment scheme applicable to a debtor ceases —

(*a*) on the date a certificate of inapplicability of the scheme is issued under section 299;

(*b*) on the date a certificate of failure of the scheme is issued under section 300(1);

(*c*) on the date a certificate of completion of the scheme is issued under section 301(1), despite any subsequent revocation of the certificate under section 302(1);

(*d*) upon the debtor being adjudged a bankrupt under this Act; or

(*e*) upon the death of the debtor,

whichever first occurs.

(2) Upon the cessation of a debt repayment scheme, the debt repayment plan under the scheme ceases to have effect.

Certificate of inapplicability of debt repayment scheme

299. The Official Assignee must issue a certificate of inapplicability of a debt repayment scheme in respect of a debtor if —

(*a*) the aggregate of the debts mentioned in section 294(1)(*a*) and proved under the scheme exceeds, at any time, the prescribed amount mentioned in section 289(2)(*a*); or

(*b*) the aggregate of the debts mentioned in section 294(1)(*b*) and (*c*) and proved under the scheme exceeds, at any time, a prescribed amount.

Certificate of failure of debt repayment scheme

300.—(1) The Official Assignee may issue a certificate of failure of a debt repayment scheme in respect of a debtor if —

(*a*) the debtor submits a statement of affairs under section 290, or furnishes any other information or document to the Official Assignee in relation to the debtor's property, debts or other financial affairs, which is false or misleading in any material particular, or contains any material omission;

(*b*) the debtor fails to furnish any information or document relating to the debtor's property, debts or other financial affairs that the Official Assignee may require;

(*c*) subject to subsection (2), the debtor fails to disclose to the Official Assignee the debtor's property (or any part of the debtor's property) or the disposal of the debtor's property (or any part of the debtor's property);

(*d*) the debtor attempts to account for any part of the debtor's property by fictitious losses or expenses;

(*e*) the debtor fails to comply with any term of the debt repayment plan under the scheme;

(*f*) the debtor fails without sufficient cause to attend any meeting of creditors convened under section 295;

(*g*) the debtor incurs a debt in excess of $1,000 after the effective date of the scheme without disclosing the fact that the debtor is subject to the scheme to the person to whom the debt is owed;

(*h*) subject to subsection (4), the debtor has entered into a transaction with any person at an undervalue at any time during the period commencing 3 years before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme;

(*i*) subject to subsection (7), the debtor has given an unfair preference (which is not a transaction at an undervalue) at any time to —

(i) the debtor's associate during the period commencing 2 years before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme; or

(ii) any other person during the period commencing one year before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme;

(*j*) knowing or believing that a false or an inaccurate debt has been claimed by any person under the scheme, the debtor fails to inform the Official Assignee;

(*k*) the debtor obtains the approval or modification of the debt repayment plan under the scheme by means of fraud, false representation or the concealment of any material fact; or

(*l*) the debtor becomes a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership during the scheme without the consent of the Official Assignee.

(2) Subsection (1)(*c*), in relation to the disposal of property, does not apply to the payment of ordinary expenses of the debtor and the debtor's dependants.

(3) For the purpose of subsection (1)(*h*), a debtor enters into a transaction with a person at an undervalue if the debtor —

(*a*) makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the debtor to receive no consideration;

(*b*) enters into a transaction with that person in consideration of marriage; or

(*c*) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.

(4) The Official Assignee must not issue any certificate of failure of a debt repayment scheme under subsection (1) in respect of any transaction entered into by the debtor at an undervalue unless the debtor was insolvent at the time the debtor entered into the transaction or became insolvent in consequence of the transaction.

(5) Where a debtor enters into a transaction at an undervalue with a person who is an associate of the debtor (otherwise than by reason only of being the debtor's employee), the requirements under subsection (4) are presumed to be satisfied unless the contrary is shown.

(6) For the purpose of subsection (1)(*i*), a debtor gives an unfair preference to a person if —

(*a*) that person is one of the debtor's creditors or a surety or guarantor for any of the debtor's debts; and

(*b*) the debtor does anything or suffers anything to be done which has the effect of putting that person into a position which is better than the position that person would have been in if that thing had not been done.

(7) The Official Assignee must not issue any certificate of failure of a debt repayment scheme under subsection (1) in respect of any unfair preference given by a debtor to any person unless the debtor —

(*a*) was insolvent at the time the debtor gave the preference or became insolvent in consequence of the preference; and

(*b*) was influenced in deciding to give the preference by a desire to produce in relation to that person the effect mentioned in subsection (6)(*b*).

(8) A debtor who has given an unfair preference to a person who, at the time the unfair preference was given, was an associate of the debtor (otherwise than by reason only of being the debtor's employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (7)(*b*).

(9) The fact that something has been done pursuant to an order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

(10) For the purposes of this section, a debtor is insolvent if —

(*a*) the debtor is unable to pay the debtor's debts as they fall due; or

(*b*) the value of the debtor's assets is less than the amount of the debtor's liabilities, taking into account the debtor's contingent and prospective liabilities.

(11) Any question whether a person is an associate of another person is to be determined in accordance with section 364(2) to (10).

Certificate of completion of debt repayment scheme

301.—(1) The Official Assignee must issue a certificate of completion of a debt repayment scheme in respect of a debtor if the debtor repays, in accordance with this Part and the debt repayment plan under the scheme, the debtor's debts which have been proved under the scheme and included in the plan.

(2) Subject to this Act and any other written law, the certificate of completion of the debt repayment scheme, upon being issued, releases the debtor from all the debtor's debts provable under the scheme except a debt which —

(*a*) the debtor had failed to disclose to the Official Assignee; and

(*b*) in respect of which a proof of debt was not filed under the scheme.

(3) Subsections (2) to (8) of section 397 apply to or in respect of the debtor as if a reference to discharge in those provisions is a reference to the certificate of completion of the debt repayment scheme and a reference to a bankrupt in those provisions is a reference to the debtor.

Revocation of certificate of completion of debt repayment scheme

302.—(1) The Official Assignee may at any time, by notice in writing to a debtor, revoke a certificate of completion of a debt repayment scheme issued under section 301(1) in respect of the debtor if the Official Assignee is satisfied that the debtor —

(*a*) did not to the best of the debtor's knowledge or belief disclose to the Official Assignee all the debtor's property or the disposal of the debtor's property (or any part of the debtor's property); or

(*b*) had obtained the approval or modification of the debt repayment plan under the scheme by means of fraud, false representation or the concealment of any material fact.

(2) Subsection (1)(*a*), in relation to the disposal of property, does not apply to the payment of ordinary expenses of the debtor and the debtor's dependants.

(3) Upon the revocation of the certificate of completion of the debt repayment scheme, the debtor's release from the debtor's debts under section 301(2) ceases.

Division 5 — Miscellaneous

Duties of debtor

303. A debtor must, in addition to any other duty specified in this Part in relation to a debt repayment scheme —

(*a*) disclose to the Official Assignee —

(i) all the debtor's property; and

(ii) the disposal of any of the debtor's property during the period commencing 5 years before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme;

(*b*) furnish such information or document within such time and in such manner as the Official Assignee or the Appeal Panel may require in relation to the scheme;

(*c*) attend any meeting of the debtor's creditors convened by the Official Assignee under section 291 or 295, and such other meetings as may be required by the Official Assignee, unless prevented by any illness or other sufficient cause;

(*d*) examine the correctness of all proofs of debts filed under the scheme and inform the Official Assignee if any person has, to the debtor's knowledge or belief, made a false or an inaccurate claim;

(*e*) discharge the debtor's obligations under the debt repayment plan under the scheme;

(*f*) before incurring any debt in excess of $1,000 after the effective date of the scheme, disclose the fact that the debtor is subject to the scheme to the person to whom the debt is to be owed;

(*g*) keep the Official Assignee advised at all times of the debtor's place of residence and such other contact details as may be required by the Official Assignee; and

(*h*) generally do all such acts and things in relation to the scheme as may be reasonably required by the Official Assignee or as may be prescribed.

Appeal Panel and Appeal Panel Committee

304.—(1) For the purpose of hearing appeals from the decisions of the Official Assignee under sections 291 and 295, there is to be established an Appeal Panel consisting of such members as may be appointed by the Minister from time to time.

(2) The appointment of the members of the Appeal Panel is for such period and on such terms as the Minister may determine.

(3) The Minister may appoint from amongst the members of the Appeal Panel, for such period and on such terms as the Minister may determine —

(*a*) a Chairperson of the Appeal Panel; and

(*b*) such number of Deputy Chairpersons of the Appeal Panel as the Minister thinks fit.

(4) There is to be paid to the Chairperson, Deputy Chairpersons and other members of the Appeal Panel such remuneration and allowances as the Minister may determine.

(5) The Minister may at any time revoke any appointment under subsection (2) or (3).

(6) Every member of the Appeal Panel is deemed to be a public servant within the meaning of the Penal Code.

(7) All the powers, functions and duties of the Appeal Panel may be exercised, discharged and performed by an Appeal Panel Committee consisting of such number of members of the Appeal Panel as may be prescribed, at least one of whom is to be the Chairperson or a Deputy Chairperson of the Appeal Panel.

(8) Subject to subsection (7), the members of an Appeal Panel Committee are to be determined by the Minister.

(9) Any act or decision of an Appeal Panel Committee is treated as an act or a decision of the Appeal Panel.

(10) An appeal under section 291(4) or 295(4) —

(*a*) must be addressed to the Chairperson of the Appeal Panel;

(*b*) must provide adequate details of the grounds for the appeal; and

(*c*) must be accompanied by the prescribed fee.

Validity of things done under debt repayment scheme

305. The cessation of a debt repayment scheme or the revocation of a certificate of completion of the scheme does not affect the validity of anything done under or in relation to the scheme.

Offences

306.—(1) Any creditor who makes or submits any claim, proof, declaration or statement of account under a debt repayment scheme which is untrue in any material particular shall be guilty of an offence, unless the creditor satisfies the court that the creditor had no intent to defraud.

(2) Any person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Fines imposed under this section must be paid into the Debt Repayment Scheme Assistance Fund maintained under section 435.

PART 16

PROCEEDINGS IN BANKRUPTCY

Division 1 — Bankruptcy applications and bankruptcy orders

Persons who may make creditor's bankruptcy application

307.—(1) Subject to this Part, a creditor's bankruptcy application may be made —

(*a*) against an individual by —

(i) one of the individual's creditors or jointly by more than one of them; or

(ii) the nominee supervising the implementation of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part 14; or

(*b*) against a firm by —

(i) one of the firm's creditors or jointly by more than one of them, if such creditor or creditors are entitled under paragraph (*a*)(i) to make a creditor's bankruptcy application against any one of the partners in the firm in respect of a partnership debt; or

(ii) the nominee supervising the implementation of, or any person (other than the partners in the firm) who is for the time being bound by, a voluntary arrangement proposed by the firm and approved under Part 14.

(2) A creditor who is entitled to make a bankruptcy application against a firm under subsection (1)(*b*) may make a bankruptcy application against any of the partners in the firm without including the others.

(3) Every creditor's bankruptcy application must be in the prescribed form and be supported by an affidavit of the creditor or of some person on the creditor's behalf having knowledge of the facts.

(4) Every creditor's bankruptcy application must be served in the manner prescribed.

Persons who may make debtor's bankruptcy application

308.—(1) Subject to this Part, a debtor's bankruptcy application may be made —

(*a*) against an individual debtor by himself or herself; or

(*b*) against a firm by all the partners in the firm or by a majority of such partners who are residing in Singapore at the time of the making of the application.

(2) A debtor's bankruptcy application must be in the prescribed form and be supported by an affidavit to which is exhibited —

(*a*) where the debtor is an individual, a statement of the debtor's affairs containing such particulars of the debtor's assets, creditors, debts and other liabilities as may be prescribed;

(*b*) where the debtor is a firm, a statement of —

(i) the firm's affairs containing such particulars of its assets, creditors, debts and other liabilities as may be prescribed; and

(ii) the affairs of each of the partners in the firm by whom the application is made containing such particulars of each partner's assets, creditors, debts and other liabilities as may be prescribed; and

(*c*) a statement containing such other information as may be prescribed.

Bankruptcy order

309. Subject to this Part, the Court may make a bankruptcy order on a bankruptcy application made under section 307 or 308.

Conditions to be satisfied in respect of debtor

310.—(1) No bankruptcy application may be made to the Court under section 307(1)(*a*) or 308(1)(*a*) against an individual debtor unless the debtor —

(*a*) is domiciled in Singapore;

(*b*) has property in Singapore; or

(*c*) has, at any time within the period of one year immediately preceding the date of the making of the application —

(i) been ordinarily resident or has had a place of residence in Singapore; or

(ii) carried on business in Singapore.

(2) No bankruptcy application may be made to the Court under section 307(1)(*b*) or 308(1)(*b*) against a firm unless —

(*a*) at least one of the partners in the firm —

(i) is domiciled in Singapore;

(ii) has property in Singapore; or

(iii) has, at any time within the period of one year immediately preceding the date of the making of the application, been ordinarily resident or has had a place of residence in Singapore; or

(*b*) the firm has, at any time within the period of one year immediately preceding the date of the making of the application, carried on business in Singapore.

(3) The reference in subsection (1)(*c*)(ii) to an individual carrying on business in Singapore includes —

(*a*) the carrying on of business in Singapore by a firm in which the individual is a partner; and

(*b*) the carrying on of business in Singapore by an agent or a manager for the individual or for such a firm.

Grounds of bankruptcy application

311.—(1) Subject to section 314, no bankruptcy application may be made to the Court in respect of any debt or debts unless at the time the application is made —

(*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $15,000;

(*b*) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;

(*c*) the debtor is unable to pay the debt or each of the debts; and

(*d*) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by execution in Singapore.

(2) The Minister may, by order in the *Gazette*, amend subsection (1)(*a*) by substituting a different sum for the sum for the time being specified in that provision.

Presumption of inability to pay debts

312. For the purposes of a creditor's bankruptcy application, a debtor is, until the debtor proves to the contrary, presumed to be unable to pay any debt within the meaning of section 311(1)(*c*) if the debt is immediately payable and any one of the following applies:

(*a*) the applicant creditor to whom the debt is owed has served on the debtor in the prescribed manner, a statutory demand, and —

(i) at least 21 days have elapsed since the statutory demand was served; and

(ii) the debtor has neither complied with it nor applied to the Court to set it aside;

(*b*) execution issued against the debtor in respect of a judgment debt owed to the applicant creditor has been returned unsatisfied in whole or in part;

(*c*) the debtor has departed from or remained outside Singapore with the intention of defeating, delaying or obstructing a creditor in the recovery of the debt;

(*d*) the Official Assignee has —

(i) issued a certificate of inapplicability of a debt repayment scheme under section 299;

(ii) issued a certificate of failure of a debt repayment scheme under section 300(1); or

(iii) revoked a certificate of completion of a debt repayment scheme under section 302(1),

in respect of the debtor within 90 days immediately preceding the date on which the bankruptcy application is made, and the applicant creditor had proved the debt under that debt repayment scheme.

Where applicant for bankruptcy order is secured creditor

313.—(1) Where the applicant for a bankruptcy order is a secured creditor of the debtor, the applicant must in the application —

(*a*) state that the applicant is willing, in the event of a bankruptcy order being made, to give up the security for the benefit of the other creditors of the bankrupt; or

(*b*) give an estimate of the value of the security, in which case the applicant may to the extent of the balance of the debt due to the applicant, after deducting the value so estimated, be admitted as a creditor in the same manner as if the applicant were an unsecured creditor.

(2) Where an applicant for a bankruptcy order who is a secured creditor of the debtor fails to disclose the applicant's security in the application, the applicant is deemed to have given up the security for the benefit of the other creditors of the debtor and upon the making of a bankruptcy order —

(*a*) the applicant is not entitled to enforce the security against the estate of the bankrupt or to retain any proceeds from the realisation of the security; and

(*b*) the applicant must execute such document of release as is required by the Official Assignee or account and pay over to the Official Assignee all proceeds from any realisation of the security.

(3) Where any secured creditor fails to execute any document of release as is required by the Official Assignee under subsection (2)(*b*), the Official Assignee may execute the document on behalf of the secured creditor, and the execution of the document by the Official Assignee has the same effect as the execution of that document by the secured creditor.

(4) Any secured creditor who fails to account or pay over to the Official Assignee the proceeds from any realisation of the security under subsection (2)(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years or to both.

(5) Any fine imposed under subsection (4) is deemed to be part of the property of the bankrupt and vests in the Official Assignee for the purposes of this Act.

Expedited bankruptcy application

314. A creditor's bankruptcy application which relies on a statutory demand may be made before the end of the period of 21 days mentioned in section 312(*a*), if —

(*a*) there is a serious possibility that the debtor's property, or the value of all or any of the debtor's property, will be significantly diminished during that period; and

(*b*) the application contains a statement to that effect.

Power of Court to stay or dismiss proceedings on bankruptcy application

315.—(1) The Court may at any time, for sufficient reason, make an order staying the proceedings on a bankruptcy application, either altogether or for a limited time, on such terms and conditions as the Court thinks just.

(2) Without affecting subsection (1), where it appears to the Court that the person making a bankruptcy application has contravened any of the provisions of this Act or any rules in relation to proceedings on a bankruptcy application, the Court may, in its discretion, dismiss the application instead of staying any proceedings on the application under that subsection.

Proceedings on creditor's bankruptcy application

316.—(1) The Court hearing a creditor's bankruptcy application must not make a bankruptcy order on the application unless the Court is satisfied that —

(*a*) the debt or any one of the debts in respect of which the application is made is a debt which, having been payable at the date of the application, has neither been paid nor secured or compounded for; and

(*b*) where the debtor does not appear at the hearing, the application has been duly served on the debtor.

(2) Where a creditor's bankruptcy application which relies on a statutory demand is made, pursuant to section 314, before 21 days have elapsed after the statutory demand was served, the Court hearing the application must not make a bankruptcy order until at least 21 days have elapsed after the statutory demand was served.

(3) The Court may dismiss the application if —

(*a*) it is not satisfied with the proof of the applicant creditor's debt or debts;

(*b*) it is not satisfied with the proof of the service of the application on the debtor;

(*c*) it is satisfied that the debtor is able to pay all of the debtor's debts;

(*d*) it is satisfied that the debtor has made an offer to secure or compound for the applicant creditor's debt the acceptance of which offer would have required the dismissal of the application and the offer has been unreasonably refused by the applicant creditor; or

(*e*) it is satisfied that for other sufficient cause no order ought to be made on the application.

(4) In determining for the purposes of subsection (3)(*c*) whether the debtor is able to pay all of the debtor's debts, the Court is to take into account the debtor's contingent and prospective liabilities.

(5) When a bankruptcy application has been made against a debtor on the ground that the debtor —

(*a*) has failed to pay a judgment debt, and there is pending an appeal from or an application to set aside, the judgment or order by virtue of which the judgment debt is payable; or

(*b*) has failed to comply with a statutory demand, and there is pending an application to set aside the statutory demand,

the Court may, if it thinks fit, stay or dismiss the application.

(6) Where the debtor appears at the hearing of the application and denies that the debtor is —

(*a*) indebted to the applicant; or

(*b*) indebted to such an amount as would justify the applicant making a bankruptcy application against him,

the Court may, subject to subsection (7), stay all proceedings on the application for such time as may be required for trial of the question relating to the debt.

(7) The Court may not order any stay of proceedings under subsection (6) unless the debtor furnishes such security as the Court may order for payment to the applicant of —

(*a*) any debt which may be established against the debtor in due course of law; and

(*b*) the costs of establishing the debt.

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a bankruptcy order on the application of some other creditor and dismiss, on such terms as it thinks just, the application in which proceedings have been stayed.

(9) If a bankruptcy order may be made on the bankruptcy application, the Court must, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the Court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under Part 15, if all of the following qualifying criteria are satisfied:

(*a*) the debt or the aggregate of the debts in respect of which the bankruptcy application is made does not exceed the prescribed amount;

(*b*) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;

(*c*) a voluntary arrangement under Part 14 in respect of the debtor is not in effect, and was not in effect at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(*d*) the debtor is not subject to any debt repayment scheme under Part 15, and has not been subject to any such debt repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(*e*) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act, or a partner in a limited liability partnership.

(10) The Court is to proceed to hear a bankruptcy application adjourned under subsection (9) if —

(*a*) the Official Assignee reports to the Court under section 289(2) that the debtor is not suitable for a debt repayment scheme under Part 15; or

(*b*) at the end of the period of adjournment, a debt repayment scheme has not commenced under Part 15 in respect of the debtor.

(11) If at any time during the period of adjournment of a bankruptcy application under subsection (9) a debt repayment scheme commences under Part 15 in respect of the debtor, the bankruptcy application is deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(12) The Court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application mentioned in subsection (9).

(13) For the purpose of subsection (9)(*d*), a person in respect of whom the Official Assignee issues —

(*a*) a certificate of inapplicability of a debt repayment scheme under section 299; or

(*b*) a certificate of completion of a debt repayment scheme under section 301(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 302(1),

is not to be treated as having been subject to that debt repayment scheme.

(14) In subsection (9)(*a*), “debt” has the same meaning as in section 288(1).

Proceedings on bankruptcy application by nominee or creditor bound by voluntary arrangement

317. The Court must not make a bankruptcy order on a bankruptcy application made under section 307(1)(*a*)(ii) or (*b*)(ii) by the nominee supervising the implementation of, or any creditor bound by, the voluntary arrangement in question unless the Court is satisfied that —

(*a*) the debtor has failed to comply with the debtor’s obligations under the voluntary arrangement;

(*b*) information which was false or misleading in any material particular or which contained material omissions —

(i) was contained in any statement of affairs or other document supplied by the debtor under Part 14 to any person; or

(ii) was otherwise made available by the debtor to the debtor’s creditors at or in connection with a meeting summoned under Part 14; or

(*c*) the debtor has failed to do all such things for the purposes of the voluntary arrangement as may have been reasonably required of the debtor by the nominee.

Proceedings on debtor's bankruptcy application

318.—(1) The Court hearing a debtor's bankruptcy application must not make a bankruptcy order on the application unless the Court is satisfied that the debtor is unable to pay the debtor's debts.

(2) Where a debtor's bankruptcy application has been made against a firm by some, but not all, of the partners in the firm, the Court must not make a bankruptcy order on the application unless the Court is satisfied that notice of the application in the prescribed form has been served in the prescribed manner on each of the partners who did not join in the application.

(3) If a bankruptcy order may be made on the bankruptcy application, the Court must, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the Court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under Part 15, if all of the following qualifying criteria are satisfied:

(*a*) the aggregate of the debts specified in the statement of affairs exhibited to the debtor's affidavit under section 308(2) does not exceed the amount mentioned in section 316(9)(*a*);

(*b*) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;

(*c*) a voluntary arrangement under Part 14 in respect of the debtor is not in effect, and was not in effect at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(*d*) the debtor is not subject to any debt repayment scheme under Part 15, and has not been subject to any such debt repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(*e*) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act or a partner in a limited liability partnership.

(4) The Court is to proceed to hear a bankruptcy application adjourned under subsection (3) if —

(*a*) the Official Assignee reports to the Court under section 289(2) that the debtor is not suitable for a debt repayment scheme under Part 15; or

(*b*) at the end of the period of adjournment, a debt repayment scheme has not commenced under Part 15 in respect of the debtor.

(5) If at any time during the period of adjournment of a bankruptcy application under subsection (3) a debt repayment scheme commences under Part 15 in respect of the debtor, the bankruptcy application is deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(6) The Court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application mentioned in subsection (3).

(7) For the purpose of subsection (3)(*d*), a person in respect of whom the Official Assignee issues —

(*a*) a certificate of inapplicability of a debt repayment scheme under section 299; or

(*b*) a certificate of completion of a debt repayment scheme under section 301(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 302(1),

is not to be treated as having been subject to that debt repayment scheme.

(8) In subsection (3)(*a*), "debt" has the same meaning as in section 288(1).

Consolidation of bankruptcy applications

319. Where 2 or more bankruptcy applications are made against the same debtor, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

Power to dismiss application against some respondents only

320. Where there are 2 or more respondents to an application, the Court may dismiss the application as to one or more of them, without affecting the effect of the application as against the other or others of them.

Power to change conduct of proceedings

321. Where any applicant for a bankruptcy order does not proceed with due diligence on the applicant's application, the Court may substitute as applicant —

(*a*) in the case of a creditor's bankruptcy application, any other creditor to whom the debtor is indebted in the amount required under section 311(1)(*a*); or

(*b*) in any other case, the Official Assignee,

and, unless the Court otherwise directs, the proceedings are to be continued as though no change had been made in the conduct of the proceedings.

Continuance of proceedings on death of debtor

322. If a debtor by or against whom a bankruptcy application has been made dies, unless the Court otherwise directs, the proceedings in the matter are to be continued as if the debtor were alive, and the Court may —

(*a*) order that the application be served on the debtor's personal representative or such other person as the Court thinks fit; or

(*b*) dispense with service of the application on the debtor.

Withdrawal of bankruptcy application

323.—(1) Subject to subsection (2) and sections 316(11) and 318(5), a bankruptcy application must not be withdrawn without the leave of the Court.

(2) Subject to subsection (3), if no party to a bankruptcy application has, for more than one year (or such extended period as the Court may allow under subsection (4)), taken any step or proceeding in the bankruptcy application that appears from records maintained by the Court, the bankruptcy application is deemed to be withdrawn on the date immediately following the expiry of that year (or extended period).

(3) Subsection (2) does not apply where the bankruptcy application has been stayed, or where proceedings on the application have been stayed, by the Court.

(4) The Court may, on an application by any party made before the one year mentioned in subsection (2) has elapsed, extend the period as the Court thinks fit.

(5) Subsection (2) applies to any bankruptcy application, whether made before, on or after 1 March 2012, but where the last step or proceeding in the bankruptcy application took place before that date, the period of one year begins on that date.

(6) Where a bankruptcy application is deemed to be withdrawn under subsection (2), the Court may, on application, reinstate the bankruptcy application and allow the bankruptcy application to proceed on such terms as the Court thinks just.

Division 2 — Protection of debtor's property

Appointment of interim receiver

324.—(1) The Court may, if it thinks it necessary or expedient for the protection of the debtor's property, at any time after the making of a bankruptcy application and before making a bankruptcy order, appoint the Official Assignee to be the interim receiver of the debtor's property or any part of the debtor's property and direct the Official Assignee to take immediate possession of the same, including any

books of accounts and other documents relating to the debtor's business.

(2) Where the Court has appointed an interim receiver under subsection (1), no person who is a creditor of the debtor in respect of a debt provable in bankruptcy —

(*a*) has any remedy against the person or property of the debtor in respect of that debt; or

(*b*) while the appointment of the interim receiver is in force, may commence or continue any action or other legal proceedings against the debtor in respect of that debt,

except with the leave of the Court and on such terms as the Court may impose.

(3) Upon the appointment of an interim receiver under subsection (1), the debtor must —

(*a*) give to the interim receiver such inventory of the debtor's property and such other information; and

(*b*) attend on the interim receiver at such times,

as the interim receiver may for the purpose of carrying out the interim receiver's functions under this section reasonably require.

(4) Upon the appointment of an interim receiver under this section, sections 335 and 336 apply, with the necessary modifications, and any reference in those sections to —

(*a*) the making of a bankruptcy order is to be read as a reference to the appointment of an interim receiver under this section;

(*b*) the Official Assignee is to be read as a reference to the interim receiver; and

(*c*) the bankrupt or the bankrupt's estate is to be read (respectively) as a reference to the debtor or the debtor's property.

(5) The Official Assignee ceases to be the interim receiver of a debtor's property if —

(*a*) the bankruptcy application made against the debtor is dismissed or withdrawn;

(*b*) a bankruptcy order is made on the application; or

(*c*) the Court by order terminates the appointment.

Power to stay proceedings against person or property of debtor

325. Any Court may by order, at any time after the making of a bankruptcy application, stay any action, execution or other legal process against the person or property of the debtor.

PART 17

ADMINISTRATION IN BANKRUPTCY

Division 1 — Bankruptcy

Commencement and duration of bankruptcy

326. The bankruptcy of any person who has been adjudged bankrupt by a bankruptcy order (whether made against the person or against the firm in which the person is a partner) —

(*a*) commences on the day the bankruptcy order is made; and

(*b*) continues until the person is discharged under Part 18.

Effect of bankruptcy order

327.—(1) On the making of a bankruptcy order —

(*a*) the property of the bankrupt —

(i) vests in the Official Assignee without any further conveyance, assignment or transfer; and

(ii) becomes divisible among the bankrupt's creditors;

(*b*) the Official Assignee is constituted the receiver of the bankrupt's property; and

(*c*) unless otherwise provided by Parts 3 and 13 to 22 —

(i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy has any

remedy against the person or property of the bankrupt in respect of that debt; and

(ii) no action or proceedings may be proceeded with or commenced against the bankrupt in respect of that debt,

except by the leave of the Court and in accordance with such terms as the Court may impose.

(2) Where a bankruptcy order is made against a firm, the order operates as if it were a bankruptcy order made against each of the persons who, at the time of the order, is a partner in the firm.

(3) This section does not affect the right of any secured creditor to realise or otherwise deal with the secured creditor’s security in the same manner as the secured creditor would have been entitled to realise or deal with it if this section had not been enacted.

(4) Despite subsection (3) and section 356, a secured creditor is not entitled to any interest in respect of the secured creditor’s debt after the making of a bankruptcy order unless the secured creditor —

(*a*) notifies the Official Assignee within 30 days after the date of the bankruptcy order of the secured creditor’s intention to claim such interest; and

(*b*) realises the secured creditor’s security within —

(i) 12 months after the date of the bankruptcy order (called in this section the realisation period); or

(ii) such further period as the Official Assignee may determine on the application of the secured creditor made at least 30 days (or such shorter period as the Official Assignee may allow) before the expiry of the realisation period.

Restrictions on dispositions of property by bankrupt

328.—(1) Where a person is adjudged bankrupt, any disposition of property made by the bankrupt during the period beginning on the day of the making of the bankruptcy application and ending on the day of the making of the bankruptcy order is void except to the extent that

such disposition has been made with the consent of, or been subsequently ratified by, the Court.

(2) For the purpose of this section, a disposition of property includes any payment (whether in cash or otherwise) made to any person by the bankrupt and accordingly, where any payment is void by virtue of this section, the person to whom the payment was made holds the sum paid for the bankrupt as part of the bankrupt's estate.

(3) Nothing in this section gives a remedy against any person in respect of —

(*a*) any property or payment which the person received from the bankrupt before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy application had been made; or

(*b*) any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(4) Where, after the commencement of his or her bankruptcy, the bankrupt has incurred a debt to a banker or any other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of Parts 3 and 13 to 22 to have been incurred before the commencement of the bankruptcy unless —

(*a*) that banker or person had notice of the bankruptcy before the debt was incurred; or

(*b*) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(5) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate, but nothing in this section affects any disposition made by a person of property held by that person on trust for any other person.

Description of bankrupt's property divisible amongst creditors

329.—(1) The property of the bankrupt divisible among the bankrupt's creditors (called in Parts 3 and 13 to 22 the bankrupt's estate) comprises —

(*a*) all such property as belongs to or is vested in the bankrupt at the commencement of his or her bankruptcy or is acquired by or devolves on him or her before his or her discharge; and

(*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his or her own benefit at the commencement of his or her bankruptcy or before his or her discharge.

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

(*a*) property held by the bankrupt on trust for any other person;

(*b*) such tools, books, vehicles and other items of equipment as are needed by the bankrupt for the bankrupt's personal use in the bankrupt's employment, business or vocation;

(*c*) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and the bankrupt's family;

(*d*) property of the bankrupt which is excluded under any other written law;

(*e*) the remainder of the bankrupt's monthly income after deducting the bankrupt's monthly contribution; and

(*f*) any annual bonus or annual wage supplement paid as part of the bankrupt's income.

Division 2 — Inquiry into bankrupt's affairs, dealings and property

Meeting of creditors

330.—(1) The Official Assignee may, at any time after the making of a bankruptcy order, summon a meeting of the bankrupt's creditors.

(2) Despite subsection (1), the Official Assignee must summon a meeting of the bankrupt's creditors whenever directed by the Court to do so or whenever requested in writing by one-fourth in value of the bankrupt's creditors to do so.

(3) Every meeting summoned under this section must be conducted in accordance with the regulations.

Creditors' committee

331.—(1) At any meeting convened by the Official Assignee under section 330(1), the creditors qualified to vote at the meeting, including the holders of general proxies or general powers of attorney from such creditors, may by ordinary resolution appoint from amongst themselves a committee (called in this section the creditors' committee) of not more than 3 persons for the purpose of advising the Official Assignee on matters relating to the administration of the property of the bankrupt.

(2) The Official Assignee may convene the creditors' committee at such times as the Official Assignee thinks necessary, but must convene the committee whenever requested in writing to do so by all or a majority of the members of the committee.

(3) Any member of the creditors' committee may resign from office by notice in writing, signed by the member and delivered to the Official Assignee.

(4) If a member of the creditors' committee becomes bankrupt, or compounds or arranges with any of the member's creditors, or is absent from and not represented at 3 consecutive meetings of the committee, the member's office becomes vacant.

(5) Any member of the creditors' committee may be removed by an ordinary resolution at any meeting of creditors, of which 7 days' notice has been given stating the object of the meeting.

(6) On a vacancy occurring in the office of a member of the creditors' committee, the Official Assignee must forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by ordinary resolution appoint another creditor or eligible person in subsection (1) to fill the vacancy.

(7) In this section, "general powers of attorney" includes lasting powers of attorney registered under the Mental Capacity Act.

Bankrupt's statement of affairs

332.—(1) Where a bankruptcy order has been made against an individual otherwise than on a debtor's bankruptcy application, the bankrupt must submit a statement of the bankrupt's affairs to the Official Assignee within 21 days after the date of the bankruptcy order.

(2) Where a bankruptcy order has been made against a firm —

(*a*) on a creditor's bankruptcy application, the bankrupts, being the partners in the firm at the time of the order, must submit a joint statement of their partnership affairs, and each partner in the firm must submit a statement of the partner's separate affairs; or

(*b*) on a debtor's bankruptcy application, every person who at the time of the order is a partner in the firm but who did not join in the application must submit a statement of the partner's separate affairs,

to the Official Assignee within 21 days after the date of the bankruptcy order.

(3) A statement of affairs mentioned in subsection (1) or (2)(*a*) or (*b*) must be submitted in the form and manner prescribed (if any), and must contain —

(*a*) such particulars of all or any of the following matters as may be prescribed:

(i) the bankrupt's assets;

(ii) the bankrupt's creditors, debts and other liabilities;

(iii) the bankrupt's current income from any source;

(iv) the bankrupt's current employment status and employment history;

(v) the educational and vocational qualifications, age and work experience of the bankrupt;

(vi) the members of the bankrupt's family;

(vii) the monthly expenses necessary for the maintenance of the bankrupt and the bankrupt's family;

(*b*) in the case of a firm, such particulars of the firm's assets, creditors, debts and other liabilities as may be prescribed; and

(*c*) such other information as may be prescribed.

(4) The Official Assignee may, if the Official Assignee thinks fit —

(*a*) release the bankrupt from the bankrupt's duty under subsection (1) or (2), as the case may be;

(*b*) extend the period specified in subsection (1) or (2); or

(*c*) direct the bankrupt in writing to submit, within 21 days after the date of the direction, such supplementary information specified in the direction as the Official Assignee considers necessary to make the statement of the bankrupt's affairs complete.

(5) Where the Official Assignee has refused to exercise a power conferred by this section, the Court, if it thinks fit, may exercise it.

(6) A bankrupt who —

(*a*) without reasonable excuse, fails to comply with the obligation imposed by subsection (1) or (2), or with a direction under subsection (4)(*c*);

(*b*) without reasonable excuse, submits a statement of affairs that does not comply with the prescribed requirements;

(*c*) submits a statement of affairs, or any supplementary information, that is false, and which the bankrupt either knows or believes to be false or does not believe to be true; or

(*d*) submits a statement of affairs, or any supplementary information, that is misleading in any material particular or contains any material omission,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

(7) Any person who claims, in writing, to be a creditor of the bankrupt may personally or by agent inspect the statement of affairs filed by the bankrupt under this section at all reasonable times and, upon payment of the prescribed fee, take any copy of or extract from the statement of affairs.

(8) Any person untruthfully claiming to be a creditor under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both.

(9) Where a trustee in bankruptcy is appointed to administer a bankrupt's estate, the trustee must, not later than 30 days after receiving the statement of affairs or, where the bankrupt has been directed to submit any supplementary information under subsection (4)(*c*), not later than 30 days after receiving such supplementary information —

(*a*) notify the Official Assignee of the administration date for the bankruptcy; and

(*b*) submit a copy of the statement of affairs and supplementary information (if any) to the Official Assignee.

Bankrupt to submit accounts

333.—(1) A bankrupt who has not obtained a discharge must, when directed by the Official Assignee, submit to the Official Assignee an account of —

(*a*) all moneys and property that have come to the bankrupt's hands for the bankrupt's own use during such period as the Official Assignee may specify; and

(*b*) the moneys and property that have been expended in the expenses necessary for the maintenance of the bankrupt and the bankrupt's family during the same period.

(2) A bankrupt who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

Powers of Official Assignee to examine persons, etc.

334.—(1) The Official Assignee or any officer authorised by the Official Assignee may at any time, before or after a bankrupt's discharge, by notice in writing —

(*a*) summon any person listed in subsection (2) to appear before the Official Assignee, on such date and at such time as may be specified in the notice, to be examined on oath in relation to the bankrupt's affairs, dealings and property; and

(*b*) require that person to produce and surrender any book, document or copy of a book or document in that person's possession or control that relates to the bankrupt's affairs, dealings and property, and without payment, inspect, keep, copy, photograph or take extracts from the book, document or copy.

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

(*a*) the bankrupt;

(*b*) the bankrupt's spouse;

(*c*) a person known or suspected by the Official Assignee to possess any of the bankrupt's property or any document relating to the bankrupt's affairs, dealings and property;

(*d*) a person believed by the Official Assignee to owe the bankrupt money;

(*e*) a person believed by the Official Assignee to be able to give information regarding —

(i) the bankrupt; or

(ii) the bankrupt's affairs, dealings and property; and

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

(3) The Official Assignee may apply to the Court for a warrant to be issued for the arrest of a person summoned under subsection (1)(*a*), where —

(*a*) the person without reasonable excuse fails to appear for the examination on the date and at the time specified in the notice; or

(*b*) there are reasonable grounds for believing that the person has absconded, or is about to abscond, with a view to avoiding compliance with this section.

(4) The Court may authorise any person arrested under subsection (3) to be kept in custody until that person is brought before the Court or until such other time as the Court may order.

(5) Where a person has been arrested under subsection (3), the Court may order the person's release, either with or without security to the satisfaction of the Court that the person will abide by such conditions as the Court may think fit to impose.

(6) Any person who, without reasonable excuse, does any of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,500 or to imprisonment for a term not exceeding one month or to both:

(*a*) fails to appear before the Official Assignee as required by a notice under subsection (1)(*a*);

(*b*) fails to answer any question relating to the bankrupt's affairs, dealings or property that is posed to that person in an examination under subsection (1)(*a*);

(*c*) fails to produce or surrender any book, document or copy of a book or document, in that person's possession or control, as required by a notice under subsection (1)(*b*).

Examination of bankrupt and others

335.—(1) Where a bankruptcy order has been made, the Court may, upon an application made by the Official Assignee at any time

(whether before or after the discharge of the bankrupt), or upon an application made by a creditor (who has tendered a proof) at any time before the discharge of the bankrupt —

(*a*) summon the bankrupt to appear before it on an appointed day and examine the bankrupt as to the bankrupt's affairs, dealings and property; and

(*b*) summon any other person to appear before the Court on the same or another appointed day and examine the person, if it appears to the Court that the person would be able to give information concerning the bankrupt or the bankrupt's affairs, dealings or property.

(2) Every person summoned before the Court under this section is to be examined on oath, whether orally or by interrogatories.

(3) Without prejudice to subsection (2), the Court may at any time require any person mentioned in subsection (1)(*b*) to submit an affidavit to the Court containing an account of the person's dealings with the bankrupt or to produce any documents in the person's possession or under the person's control relating to the bankrupt or the bankrupt's affairs, dealings or property.

(4) The Court may adjourn any examination under this section from time to time.

(5) Any creditor who has tendered a proof or the representative of such creditor who has been authorised in writing, may question the bankrupt or such other person as may have been summoned by the Court under subsection (1) concerning the bankrupt's affairs, dealings or property and the causes of the bankrupt's failure.

(6) The Official Assignee must take part in the examination of the bankrupt under this section and may, for the purpose of taking part in the examination, employ a solicitor.

(7) Where a special manager of the bankrupt's estate or business (other than the bankrupt himself or herself) is appointed by the Official Assignee under section 379, the special manager may take part in the examination of the bankrupt or any other person summoned under this section and may, for the purpose of taking part in the examination, employ a solicitor.

(8) No solicitor is allowed to take part in the examination under this section on behalf of the bankrupt.

(9) The Court may put such questions as it thinks expedient to the bankrupt or to such other person summoned by it.

(10) It is the duty of the bankrupt and any other person summoned by the Court under this section to answer all such questions as the Court puts or allows to be put to the bankrupt or other person.

(11) The Court must cause to be made such record of the examination as the Court thinks proper and any record so made may, after the record is made, be used in evidence against the person in the course of whose examination the record was made.

(12) Any record made under subsection (11) must, at all reasonable times and upon payment of the prescribed fee, be made available to any creditor for review at the premises of the Court.

(13) Where the Court is of the opinion that the affairs of the bankrupt have been sufficiently investigated, the Court may, by order, conclude the examination.

(14) The order under subsection (13) does not preclude the Court from directing a further examination of the bankrupt or any other person as to the bankrupt's affairs, dealings and property whenever the Court sees fit to do so, whether before or after the bankrupt has been discharged from bankruptcy.

(15) Where a bankrupt or any other person summoned by the Court under this section without reasonable excuse fails at any time to attend before the Court, or where there are reasonable grounds for believing that the bankrupt or such other person has absconded, or is about to abscond, with a view to avoiding his or her appearance before the Court under this section, the Court may cause a warrant to be issued for the arrest of the bankrupt or that other person and for the seizure of any books, papers, records, money or goods in the possession of the bankrupt or that other person.

(16) The Court may authorise —

(*a*) any person arrested under subsection (15) to be kept in custody; and

(*b*) anything seized from such person to be held,

until that person is brought before the Court or until such other time as the Court may order.

(17) The Court may, if it thinks fit, order that any person, who if within Singapore would be liable to be summoned to appear before it and examined under this section, is to be examined in Singapore or elsewhere.

Power of Court following examination of bankrupt and others

336.—(1) If it appears to the Court, on consideration of any evidence obtained under section 335 that any person is in possession of any property comprised in the bankrupt's estate, the Court may, on the application of the Official Assignee, order that person to deliver the whole or any part of the property to the Official Assignee at such place and time and in such manner and on such terms as the Court may think fit.

(2) If it appears to the Court, on consideration of any evidence obtained under section 335 that any person is indebted to the bankrupt, the Court may, on the application of the Official Assignee, order that person to pay to the Official Assignee, at such place and time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.

Unenforceability of liens on books, etc.

337.—(1) Subject to this section, a lien or other right to retain possession of any of the books, papers or other records relating to the affairs or property of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the Official Assignee.

(2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

Official Assignee to settle list of debtors to bankrupt's estate

338.—(1) The Official Assignee may, after a bankruptcy order has been made, prepare and file in Court a list of persons supposed to be

indebted to the bankrupt (called in this section a list of debtors), with the amounts in which they are supposed to be so indebted set out opposite to their names respectively.

(2) Before finally settling the name and amount of the debt of any person on the list of debtors, the Official Assignee must give notice in writing to that person stating that —

(*a*) the Official Assignee has placed that person on the list of debtors to the bankrupt's estate in the amount specified in the notice; and

(*b*) unless that person on or before a day specified in such notice gives to the Registrar and the Official Assignee notice in writing of that person's intention to dispute that person's indebtedness, that person is deemed to admit that the amount set out opposite that person's name in the list of debtors is due and owing by that person to the bankrupt, and that person is to be settled on the list accordingly.

(3) Any person included in the list of debtors who does not give notice of the person's intention to dispute the person's indebtedness within the time limited in that behalf is to be settled on that list, and execution may be issued against the person for the amount set out opposite the person's name in the list in the same way as if judgment had been entered against the person for such amount in favour of the Official Assignee.

(4) A certificate by the Registrar that the person named in the certificate has been settled on a list of debtors as a debtor to the bankrupt's estate in the amount specified in the certificate is proof of the facts stated in the certificate.

(5) A person settled on a list of debtors under this section may apply to the Court in a summary way for leave to dispute the person's indebtedness or the amount of the person's indebtedness.

(6) The Court may if it thinks fit make such order for determining the question of the person's indebtedness or amount of indebtedness mentioned in subsection (5) as may seem expedient, upon the terms of the person giving security for costs and either paying into Court or giving security for the whole or such part of the alleged debt as under

the circumstances may seem reasonable, and may stay all further proceedings.

Division 3 — Monthly contribution and target contribution

Determination of monthly contribution and target contribution

339.—(1) The Official Assignee must, not later than 2 months after the administration date of a bankruptcy —

(*a*) determine the bankrupt's monthly contribution and target contribution in respect of the bankruptcy; and

(*b*) serve a notice of the determination on —

(i) the bankrupt;

(ii) every creditor who has filed a proof of debt in respect of the bankruptcy; and

(iii) in a case where the determination is made before the expiry of the period mentioned in section 347(2), every creditor who is mentioned in the statement of the bankrupt's affairs but has not filed a proof of debt.

(2) For the purposes of determining the monthly contribution mentioned in subsection (1)(*a*), the Official Assignee must take into account —

(*a*) the current monthly income of the bankrupt;

(*b*) the extent to which the current monthly income of the bankrupt's spouse may contribute to the maintenance of the bankrupt's family;

(*c*) the monthly income that the bankrupt may reasonably be expected to earn over the duration of the bankruptcy, taking into account —

(i) the previous and current monthly income of the bankrupt;

(ii) the educational and vocational qualifications, age and work experience of the bankrupt;

(iii) the range of monthly income earned by persons who are employed in occupations, positions or roles similar to that in which the bankrupt is, or can be expected to be, employed;

(iv) the effect which the bankruptcy may have on the bankrupt's earning capacity or other income;

(v) the prevailing economic conditions; and

(vi) the period of time during which the bankrupt is likely to be capable of earning a meaningful income; and

(*d*) the reasonable expenses for the maintenance of the bankrupt and the bankrupt's family.

(3) Where the determination under subsection (1) is made by a trustee in bankruptcy, the trustee must also serve the notice of the determination, together with an explanation of the basis for making the determination, on the Official Assignee.

Review by Court of determination of monthly contribution and target contribution

340.—(1) If a bankrupt or any creditor of the bankrupt is dissatisfied with the monthly contribution and target contribution determined under section 339, the bankrupt or the creditor (as the case may be) may, within 21 days after the service of the notice of the determination, apply to the Court to review the determination.

(2) The Court may, in any particular case, extend the period for the making of the application under subsection (1), if the Court is satisfied that it is just to do so.

(3) An application under subsection (1) must be served, within 3 days after the date on which the application is filed, on —

(*a*) the Official Assignee, or the trustee in bankruptcy, whose determination under section 339 is the subject of the application; and

(*b*) the bankrupt, unless the application was made by the bankrupt.

(4) Upon being served with the application under subsection (3)(*a*), the Official Assignee or the trustee in bankruptcy (as the case may be) must forthwith give notice of the application to every person on whom the notice of the determination was served under section 339(1)(*b*)(ii) and (iii) and (3) (except, where the application was made by a creditor, that creditor).

(5) On hearing an application under subsection (1), the Court may —

(*a*) confirm or vary the monthly contribution and target contribution in respect of which the application is brought; or

(*b*) give such directions to the Official Assignee or trustee in bankruptcy (as the case may be), or make such order, as the Court may think fit.

(6) Unless the Court orders otherwise, a variation under subsection (5)(*a*) of the monthly contribution and target contribution takes effect on the date of the order.

(7) A variation of the monthly contribution and target contribution made under subsection (5)(*a*) does not affect any payment made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of the variation.

(8) The Official Assignee or trustee in bankruptcy (as the case may be) must, within 14 days after the variation of the monthly contribution and target contribution under subsection (5)(*a*), serve a notice of the variation order on —

(*a*) the bankrupt;

(*b*) every creditor who has filed a proof of debt in respect of the bankruptcy; and

(*c*) in a case where the variation is made before the expiry of the period mentioned in section 347(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

Power of Court to vary monthly contribution and target contribution

341.—(1) Where the Court is satisfied, on the application of the Official Assignee or the trustee in bankruptcy, a bankrupt or any creditor of the bankrupt, that any of the conditions described in subsection (2) apply, the Court may make such order as it thinks fit to vary the bankrupt's monthly contribution and target contribution.

(2) The conditions mentioned in subsection (1) are as follows:

(*a*) before the determination of the monthly contribution and target contribution under section 339 was made, the bankrupt concealed from, or failed to disclose to, the Official Assignee or trustee in bankruptcy (as the case may be) information which the bankrupt knows or ought reasonably to know would have a material impact on the determination;

(*b*) information which would have a material impact on the determination of the bankrupt's monthly contribution and target contribution under section 339 —

(i) was not available to the bankrupt before the making of that determination; and

(ii) is now available;

(*c*) it is otherwise just and equitable to vary the monthly contribution and target contribution determined under section 339.

(3) An application under subsection (1) must be served, within 3 days after the date of filing, on —

(*a*) the Official Assignee, or the trustee in bankruptcy, whose determination under section 339 is the subject of the application, unless the application was made by the Official Assignee or the trustee, as the case may be; and

(*b*) the bankrupt, unless the application was made by the bankrupt.

(4) Upon —

(*a*) the filing of an application under subsection (1) by the Official Assignee or trustee in bankruptcy; or

(*b*) being served with an application under subsection (3)(*a*), where the application is not filed by the Official Assignee or trustee in bankruptcy,

the Official Assignee or trustee in bankruptcy (as the case may be) must forthwith give notice of the application to every person on whom the notice of the determination was served under section 339(1)(*b*)(ii) and (iii) and (3) (except, where the application was made by a creditor, that creditor).

(5) Unless the Court orders otherwise, a variation under subsection (1) of the monthly contribution and target contribution takes effect on the date of the order.

(6) A variation of the monthly contribution and target contribution made under subsection (1) does not affect any payments made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of the variation.

(7) The Official Assignee must, within 14 days after the variation of the monthly contribution and target contribution under subsection (1), serve a notice of the variation order on —

(*a*) the bankrupt;

(*b*) every creditor who has filed a proof of debt; and

(*c*) in a case where the variation is made before the expiry of the period mentioned in section 347(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

Power of Official Assignee to reduce monthly contribution and target contribution

342.—(1) The Official Assignee may, on the application of a bankrupt, issue a certificate reducing the bankrupt's monthly contribution and target contribution to such extent as the Official Assignee thinks fit, if the Official Assignee is satisfied that one or

more of the conditions described in subsection (2) arose after the determination of the monthly contribution and target contribution.

(2) The conditions mentioned in subsection (1) are as follows:

(*a*) the reasonable expenses for the maintenance of the bankrupt's family have increased as a result of an increase in the number of the members of the bankrupt's family;

(*b*) the contribution by the bankrupt's spouse to the maintenance of the bankrupt's family has been substantially reduced as a result of a substantial reduction in the monthly income earned by the bankrupt's spouse, and that reduction in income is not likely to be transient in nature;

(*c*) the bankrupt is unable to pay the monthly contribution in full due to the personal circumstances of the bankrupt, including but not limited to a debilitating illness, which resulted in a substantial reduction in the bankrupt's income, and that reduction in income is not likely to be transient in nature.

(3) A certificate issued under subsection (1) takes effect on the date it is issued.

(4) A certificate issued under subsection (1) does not affect any payments made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of issue of the certificate.

(5) The Official Assignee must, within 14 days after the issue of a certificate under subsection (1), serve a notice of the issue of the certificate on —

(*a*) the bankrupt;

(*b*) every creditor who has filed a proof of debt; and

(*c*) in a case where the reduction is made before the expiry of the period mentioned in section 347(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

(6) Where the bankruptcy is being administered by a trustee in bankruptcy, and the certificate under subsection (1) was issued by the trustee, the trustee must also serve the notice of the issue of the certificate, together with an explanation of the basis for issuing the certificate, on the Official Assignee.

Review by Court of decision of Official Assignee under section 342

343.—(1) Where a bankrupt or any creditor of the bankrupt is dissatisfied with the decision of the Official Assignee under section 342(1), the bankrupt or the creditor (as the case may be) may, within 21 days after the service of the notice mentioned in section 342(5), apply to the Court to review the decision.

(2) The Court may, in any particular case, extend the period for the making of an application under subsection (1) if the Court is satisfied that it is just to do so.

(3) An application under subsection (1) must be served, within 3 days after the date of filing, on the Official Assignee, who must forthwith —

(*a*) serve a copy of the application on the bankrupt, unless the application was made by the bankrupt; and

(*b*) give notice of the application to every creditor who was, under section 342(5)(*b*) or (*c*), entitled to service of the notice mentioned in section 342(5) (except, where the application was made by a creditor, that creditor).

(4) On hearing an application under subsection (1), the Court may —

(*a*) confirm, vary or cancel the certificate under section 342(1) in respect of which the application is brought; or

(*b*) give such directions to the Official Assignee, or make such order, as the Court may think fit.

(5) Unless the Court orders otherwise, a variation made under subsection (4)(*a*) of the certificate under section 342(1) takes effect from the date of issue of the certificate.

(6) A variation of the certificate does not affect any payment made by the bankrupt, prior to the date of the variation, in respect of any reduced monthly contribution pursuant to the certificate.

(7) The Official Assignee must, within 14 days after a variation under subsection (4)(*a*) of the certificate under section 342(1), serve a notice of the variation order on every person who was, under section 342(5) or (6), entitled to service of the notice of the issue of the certificate.

Review by Official Assignee of administration by trustee in bankruptcy

344.—(1) A trustee in bankruptcy must, not later than 30 days after each relevant anniversary of the administration date for the bankruptcy, submit to the Official Assignee a report (in such form as may be prescribed) of the trustee's administration of the bankruptcy.

(2) The report under subsection (1) is to contain particulars of —

(*a*) the total amount of debts owed to creditors who have filed their proof of debt;

(*b*) the property of the bankrupt comprised in the bankruptcy estate and the status of the realisation of such property;

(*c*) the monthly contribution and target contribution for the bankruptcy;

(*d*) the payments that have been made by the bankrupt to the bankruptcy estate; and

(*e*) any other payments that have been made to the bankruptcy estate.

(3) Upon receipt of a report under subsection (1), if the Official Assignee is of the opinion that the monthly contribution and target contribution determined by the trustee in bankruptcy are excessive, the Official Assignee may issue a certificate reducing the monthly contribution and target contribution.

(4) In this section, "relevant anniversary", in relation to the administration date for a bankruptcy, means —

(*a*) in any case where the bankruptcy is a repeat bankruptcy, the seventh and every subsequent anniversary of the administration date; and

(*b*) in any other case, the fifth and every subsequent anniversary of the administration date.

Division 4 — Proof of debts

Description of debts provable in bankruptcy

345.—(1) Subject to this section and section 352, the following are provable in bankruptcy:

(*a*) any debt or liability to which a bankrupt —

(i) is subject at the date of the bankruptcy order; or

(ii) may become subject before the bankrupt's discharge by reason of any obligation incurred before the date of the bankruptcy order;

(*b*) any interest payable by the bankrupt on any debt or liability mentioned in paragraph (*a*) for any period before the date of the bankruptcy order.

(2) A person having notice of the making of a bankruptcy application may not prove under the bankruptcy order made on the application, for any debt or liability contracted by the bankrupt subsequent to the date of the person so having notice.

(3) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, breach of trust, tort or bailment, or an obligation to make restitution, are not provable in bankruptcy.

(4) For the purposes of subsection (1), in determining whether any liability in tort is provable in bankruptcy, the bankrupt is deemed to be subject to that liability by reason of an obligation incurred at the time when the cause of action for that tort accrued.

(5) An estimate is to be made by the Official Assignee of the value of any debt or liability provable under this section which, by reason of

its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(6) Any person aggrieved by any such estimate may appeal to the Court.

(7) If in the opinion of the Court the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect and, upon the making of the order, the debt or liability is, for the purposes of Parts 16 to 21, deemed to be a debt not provable in bankruptcy.

(8) If in the opinion of the Court the value of the debt or liability is capable of being fairly estimated, the Court may assess the same and may give all necessary directions for this purpose, and the amount of the value when assessed is deemed to be a debt provable in bankruptcy.

(9) An amount payable under any order made by a court under any written law relating to the confiscation of the proceeds of crime is provable in bankruptcy.

Mutual credit and set-off

346.—(1) Where there have been any mutual credits, mutual debts or other mutual dealings between a bankrupt and any creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings are to be set off against each other and only the balance is to be a debt provable in bankruptcy.

(2) The following are excluded from any set-off under subsection (1):

(*a*) any debt or liability of the bankrupt that is not a debt provable in bankruptcy;

(*b*) any debt or liability that arises by reason of an obligation incurred at a time when the creditor had notice that a bankruptcy application relating to the bankrupt was pending.

Creditors to file proof of debts within time limited

347.—(1) The Official Assignee must, not later than 30 days after the administration date for a bankruptcy, give notice, in the manner prescribed (if any), of the bankruptcy order and of the time within which creditors are required under subsection (2) to file their proof of debt, to —

(*a*) every creditor mentioned in the statement of affairs or supplementary information (if any); and

(*b*) every other person who, to the Official Assignee's knowledge, claims to be a creditor.

(2) Subject to subsections (3) and (4), a creditor cannot prove a debt in a bankruptcy unless the creditor files a proof in respect of the debt not later than 4 months after the administration date of the bankruptcy.

(3) The Court may, on the application of a creditor made at any time, extend the period during which the creditor may prove a debt, if the Court considers it just to do so.

(4) The Official Assignee may, on the application of a creditor made at any time, extend the period during which the creditor may prove a debt, if the Official Assignee is satisfied that —

(*a*) the creditor did not know, and could not reasonably be expected to know, of the bankruptcy order before the expiry of the period mentioned in subsection (2); or

(*b*) the creditor could not reasonably be expected to prove the debt before the expiry of the period mentioned in subsection (2).

Surrender of security for non-disclosure

348.—(1) If a secured creditor omits to disclose the secured creditor's security, the secured creditor must surrender the security for the general benefit of creditors, unless the Court, on application by the secured creditor, relieves the secured creditor from the effect of this section on the ground that the omission is inadvertent or the result of an honest mistake.

(2) If the Court grants relief to the secured creditor, the Court may direct that the secured creditor's proof of debt be amended on such terms as the Court thinks just.

(3) An order of the Court relieving a secured creditor of a bankrupt from the effect of this section must be served on the Official Assignee.

Valuation of property

349.—(1) If a secured creditor does not either realise or surrender the secured creditor's security, the secured creditor must, before ranking for dividend, state in the secured creditor's proof the particulars of the security, the date when it was given and the value at which the secured creditor assesses it, and the secured creditor is entitled to receive a dividend only in respect of the balance due to the secured creditor after deducting the value so assessed.

(2) If the Official Assignee is dissatisfied with the value at which a security is assessed, the Official Assignee may require that the property comprised in any security so valued be offered for sale and on such terms and conditions as are agreed on between the creditor and the Official Assignee, and, in default of agreement, as the Court may direct.

Failure to comply

350. If a secured creditor contravenes section 348 or 349 or any regulation mentioned in section 351, the secured creditor is excluded from all share in any dividend.

Regulations as to proof of debts

351. The prescribed regulations must be observed with respect to the mode of proving debts, the quantification of proofs, the admission and rejection of proofs and any other matters relating to proof of debts.

Priority of debts

352.—(1) Subject to the provisions of this Act, in the distribution of the property of a bankrupt, the following are to be paid in priority to all other debts:

(*a*) first, the costs and expenses of administration or otherwise incurred by the Official Assignee;

(*b*) second, the costs of the applicant for the bankruptcy order (whether taxed or agreed) and the costs and expenses properly incurred by a nominee in respect of the administration of any voluntary arrangement under Part 14;

(*c*) third, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of employment or any award or agreement regulating the conditions of employment of any employee;

(*d*) fourth, subject to subsection (2), the amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or any award or agreement that regulates the conditions of employment, whether such amount becomes payable before, on or after the date of the bankruptcy order;

(*e*) fifth, all amounts due in respect of any work injury compensation under the Work Injury Compensation Act accrued before, on or after the date of the bankruptcy order;

(*f*) sixth, all amounts due in respect of contributions payable, during a period of 12 consecutive months commencing not earlier than 12 months before and ending not later than 12 months after the date of the bankruptcy order, by the bankrupt as the employer of any person, under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act;

(*g*) seventh, subject to subsection (2), all remuneration payable to any employee in respect of vacation leave, or in the case of the employee's death, to any other person in the employee's right, accrued in respect of any period before, on or after the date of the bankruptcy order;

(*h*) eighth, the amount of all taxes assessed, and any goods and services tax due, under any written law before the date of the bankruptcy order, or assessed at any time before the time fixed for the proving of debts has expired;

(*i*) ninth, all premiums (including interest and penalties for late payment) and other sums payable in respect of the bankrupt's insurance cover under the MediShield Life Scheme mentioned in section 3 of the MediShield Life Scheme Act 2015 before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(*c*), (*d*) and (*g*) must not exceed such amount as the Minister may prescribe by order in the *Gazette*.

(3) In subsection (1)(*c*), (*d*), (*f*) and (*g*) and this subsection —

"employee" means an individual who has entered into or works under a contract of service with the bankrupt and includes a subcontractor of labour;

"ex gratia payment" means an amount payable to an employee on the bankruptcy of the employee's employer or on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement;

"retrenchment benefit" means an amount payable to an employee on the bankruptcy of the employee's employer or on the termination of the employee's service by his or her employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "an amount payable to an employee" for these purposes means an amount ascertained from any contract of employment, award or agreement, or if no amount is so ascertainable, such amount as is determined by the Commissioner for Labour or by an Employment Claims Tribunal constituted under section 4 of the State Courts Act;

"wages or salary" includes —

(*a*) all arrears of money due to a subcontractor of labour;

(*b*) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, whether such amount becomes payable before, on or after the date of the bankruptcy order; and

(*c*) any amount payable to an employee, on termination of the employee's employment, as a gratuity under any contract of employment or any award or agreement that regulates the conditions of the employee's employment, whether such amount becomes payable before, on or after the date of the bankruptcy order.

(4) The debts in each class specified in subsection (1) rank in the order specified in that subsection, but debts of the same class rank equally between themselves, and are to be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case the debts of the same class are to abate in equal proportions between themselves.

(5) Where any payment has been made to any employee of the bankrupt on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced, in a bankruptcy —

(*a*) has a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the bankruptcy has been diminished by reason of the payment; and

(*b*) has the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(6) Where any creditor has given any indemnity or made any payment of moneys by virtue of which any asset of the bankrupt has

been recovered, protected or preserved, the Court may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks run by the creditor in so doing.

(7) Where an interim receiver has been appointed under section 324 before the making of the bankruptcy order, the date of the appointment is, for the purposes of this section, deemed to be the date of the bankruptcy order.

Payment of partnership debts

353.—(1) In the case of partners, the joint estate is applicable in the first instance in payment of their joint debts, and the separate estate of each partner is applicable in the first instance in payment of the partner's separate debts.

(2) If there is surplus of the separate estates, it is to be dealt with as part of the joint estate.

(3) If there is surplus of the joint estate, it is to be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

Right of landlord to distrain for rent

354.—(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of a bankrupt for rent due to the landlord or other person from the bankrupt is, subject to subsection (5), available against goods and effects comprised in the bankrupt's estate in respect only of not more than 3 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy application relates and a bankruptcy order is subsequently made on that application, any amount recovered by way of that distress which —

(*a*) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy; or

(*b*) is in respect of rent for a period or part of a period after the distress was levied,

is held by the landlord or other person in trust for the bankrupt as part of the bankrupt's estate and the landlord or other person must, upon being given notice by the Official Assignee to do so, make over to the Official Assignee the amount so held in trust by the landlord or other person for the bankrupt.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held by the person in trust for the bankrupt under subsection (2) are to be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the Official Assignee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the Official Assignee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) A landlord or other person to whom rent is payable is not entitled at any time after the discharge of a bankrupt to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Any right to distrain against property comprised in a bankrupt's estate is exercisable despite that the property has vested in the Official Assignee.

(7) The provisions of this section do not affect a landlord's right in a bankruptcy to prove for any debt due to the landlord from the bankrupt in respect of rent.

Contracts to which bankrupt is party

355.—(1) This section applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the Court under this section is a debt provable in bankruptcy.

(4) Where an undischarged bankrupt is a party to any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Interest on debts

356.—(1) Where interest on a debt was not previously reserved or agreed, interest is allowed on the debt at a rate not exceeding the prescribed rate of interest in the following circumstances:

(*a*) in any case where the debt is due by virtue of a written instrument and payable at a certain date, interest is allowed for the period starting on (and including) the day after that date and ending on (and including) the date of the bankruptcy order;

(*b*) in any other case, if a demand for payment was made in writing by or on behalf of the creditor before the making of the bankruptcy application, and notice was given that interest would be payable from the date of the demand to the date of the payment, interest is allowed for the period starting on (and including) the day after the date of the demand and ending on (and including) the date of the bankruptcy order.

(2) For the purposes of distribution of dividend —

(*a*) where a debt which has been proved in a bankruptcy includes interest, and the rate of such interest was previously agreed or reserved, the interest is calculated —

(i) for the period starting on (and including) the date the interest was payable and ending on (and including) the date of the bankruptcy order; and

(ii) at the rate previously agreed or reserved; and

(*b*) where a debt which has been proved in a bankruptcy includes interest, and the rate of such interest was not previously agreed or reserved, the interest is calculated —

(i) for the period starting on (and including) the date the interest was payable and ending on (and including) the date of the bankruptcy order; and

(ii) at the prescribed rate of interest.

(3) Interest on preferential debts ranks equally with interest on other debts.

(4) In this section, "interest" includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called.

Division 5 — Composition or scheme of arrangement

Creditors may accept composition or scheme by special resolution

357.—(1) Where a bankruptcy order has been made, the creditors who have proved their debts may, if they think fit —

(*a*) at a general meeting of creditors; or

(*b*) in writing,

by special resolution, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs.

(2) A meeting under subsection (1)(*a*) is to be summoned by the Official Assignee by not less than 21 days' notice.

(3) A special resolution in writing under subsection (1)(*b*) is to be sought by a notice from the Official Assignee giving the creditors 21 days to reply.

(4) Any notice under this section must state generally the terms of the proposal and must be accompanied by a report of the Official Assignee thereon.

(5) Where a special resolution is sought at a general meeting of creditors under subsection (1)(*a*), any creditor who has proved the creditor's debt may assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee in the prescribed form, and attested by a witness, and sent or posted so as to be received by the Official Assignee not later than 3 days before the meeting, and a creditor so assenting or dissenting is taken as having been present and voting at that meeting.

(6) Where a special resolution is sought in writing under subsection (1)(*b*), any creditor who has proved the creditor's debt may assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee, and sent or posted so as to be received by the Official Assignee not later than 21 days after the date of the Official Assignee's notice.

(7) The composition or scheme is not binding on the creditors unless the bankruptcy order to which it relates is discharged or annulled under section 358.

(8) In this section, "special resolution" means —

(*a*) in relation to a special resolution sought under subsection (1)(*a*), a resolution passed at a general meeting of creditors by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who do not attend personally or by proxy at the meeting as having voted in favour of the resolution; and

(*b*) in relation to a special resolution sought under subsection (1)(*b*), a resolution approved in writing by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who fail to assent to or dissent from the composition or scheme in writing as having assented to the resolution.

Discharge or annulment of bankruptcy order by certificate of Official Assignee where composition or scheme accepted by creditors

358.—(1) Where a composition or scheme is accepted by the creditors by a special resolution under section 357, the Official Assignee may —

(*a*) discharge the bankrupt by issuing a certificate of discharge; or

(*b*) if the composition or scheme is accepted by all creditors, annul the bankruptcy order by issuing a certificate of annulment.

(2) Notice of every discharge or annulment under subsection (1) must be given to the Registrar and be published in the *Gazette* and in such other manner as the Official Assignee thinks fit.

(3) The Official Assignee must, upon the application of a bankrupt or the bankrupt's creditor or any other interested person, issue to the applicant a copy of the certificate of discharge or certificate of annulment upon the payment of the prescribed fee.

(4) A certificate of discharge or certificate of annulment issued under subsection (1) is binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy.

(5) The Court may, on an application by the Official Assignee or any creditor, annul the composition or scheme by revoking the certificate of discharge or certificate of annulment (as the case may be), if —

(*a*) the bankrupt defaults in paying any instalment due under the composition or scheme; or

(*b*) the Court is satisfied that —

(i) the composition or scheme cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the bankrupt; or

(ii) the acceptance of the proposal by the creditors was obtained by fraud.

(6) An annulment of the composition or scheme under subsection (5) does not affect the validity of any sale, disposition or payment duly made or thing duly done under or pursuant to the composition or scheme.

(7) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment duly made or other thing duly done by or under the authority of the Official Assignee or by the Court is valid except that the property of the bankrupt reverts to the bankrupt or, on an application by any person interested, vests in such person as the Court may appoint and on such terms as the Court may direct.

(8) The Court may include in its order such supplemental provisions as may be authorised by the Rules.

Effect of composition or scheme

359. A composition or scheme accepted under section 357 is not binding on any creditor so far as regards a debt or liability from which, under Parts 16 to 21, the bankrupt would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Division 6 — Effect of bankruptcy on antecedent transactions

Provisions as to second or subsequent bankruptcy, etc.

360.—(1) Where —

(*a*) a second or subsequent bankruptcy order is made against a bankrupt; or

(*b*) an order is made for the administration in bankruptcy of the estate of a deceased bankrupt,

then for the purposes of any proceedings consequent upon any such order, the Official Assignee is deemed to be a creditor in respect of any unsatisfied balance of the debts provable in the last preceding bankruptcy against the property of the bankrupt in the second or subsequent bankruptcy or administration in bankruptcy, as the case may be.

(2) For the purposes of subsection (1) —

(*a*) any unsatisfied debts provable in the last preceding bankruptcy, which were under section 352(1) to be paid in priority to all other debts in that bankruptcy, continue to enjoy the same priority and the same rank in the order specified in section 352(1) in the second or subsequent bankruptcy or administration in bankruptcy; and

(*b*) any unsatisfied debts of a class specified in section 352(1) in the last preceding bankruptcy rank equally with debts of the same class in the second or subsequent bankruptcy or administration in bankruptcy.

(3) Where —

(*a*) a second or subsequent bankruptcy order is made against a bankrupt; or

(*b*) an order is made for the administration in bankruptcy of the estate of a deceased bankrupt,

any property acquired by the bankrupt since the bankrupt was last adjudged bankrupt, which at the date when the subsequent application was made had not been distributed amongst the creditors in the last preceding bankruptcy, vests (subject to any disposition thereof made by the Official Assignee in that bankruptcy without knowledge of the making of the subsequent application) in the Official Assignee on account of the subsequent bankruptcy or administration in bankruptcy, as the case may be.

(4) Where the Official Assignee in any bankruptcy receives notice of a subsequent application in bankruptcy against the bankrupt or after the bankrupt's death of an application for the administration of the bankrupt's estate in bankruptcy, the Official Assignee holds any property then in the Official Assignee's possession which has been acquired by the bankrupt since the bankrupt was adjudged bankrupt until the subsequent application has been disposed of.

(5) If on a subsequent application a bankruptcy order or an order for the administration of the estate in bankruptcy is made, the Official Assignee holds all the property or the proceeds of the property (after deducting the Official Assignee's costs and expenses) to the account

of the subsequent bankruptcy, or administration in bankruptcy, as the case may be.

(6) Where a second or subsequent bankruptcy order is made against a bankrupt —

(*a*) section 371(1) ceases to apply to the last preceding bankruptcy, with effect from the date of that order; and

(*b*) section 395(2) does not apply to the last preceding bankruptcy for the duration of the second or subsequent bankruptcy.

Transactions at undervalue

361.—(1) Subject to this section and sections 363 and 365, where an individual is adjudged bankrupt and the individual has at the relevant time (as defined in section 363) entered into a transaction with any person at an undervalue, the Official Assignee may apply to the Court for an order under this section.

(2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 363 and 365, an individual enters into a transaction with a person at an undervalue if —

(*a*) the individual makes a gift to that person or the individual otherwise enters into a transaction with that person on terms that provide for the individual to receive no consideration;

(*b*) the individual enters into a transaction with that person in consideration of marriage; or

(*c*) the individual enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Unfair preferences

362.—(1) Subject to this section and sections 363 and 365, where an individual is adjudged bankrupt and the individual has, at the relevant time (as defined in section 363), given an unfair preference to any person, the Official Assignee may apply to the Court for an order under this section.

(2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that unfair preference.

(3) For the purposes of this section and sections 363 and 365, an individual gives an unfair preference to a person if —

(*a*) that person is one of the individual's creditors or a surety or guarantor for any of the individual's debts or other liabilities; and

(*b*) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position that person would have been in if that thing had not been done.

(4) The Court must not make an order under this section in respect of an unfair preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(*b*).

(5) An individual who has given an unfair preference to a person who, at the time the unfair preference was given, was an associate of the individual (otherwise than by reason only of being the individual's employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done pursuant to the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

Relevant time under sections 361 and 362

363.—(1) Subject to this section, the time at which an individual enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the preference given —

(*a*) in the case of a transaction at an undervalue —

(i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption mentioned in section 312(*d*), within the period commencing 3 years before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or

(ii) in any other case, within the period of 3 years ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt;

(*b*) in the case of an unfair preference which is not a transaction at an undervalue and which is given to a person who is an associate of the individual (otherwise than by reason only of being the individual's employee) —

(i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption mentioned in section 312(*d*), within the period commencing 2 years before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or

(ii) in any other case, within the period of 2 years ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or

(*c*) in any other case of an unfair preference which is not a transaction at an undervalue —

(i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption mentioned in section 312(*d*), within the period commencing one year before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or

(ii) in any other case, within the period of one year ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt.

(2) Where an individual enters into a transaction at an undervalue or gives an unfair preference at a time mentioned in subsection (1)(*a*), (*b*) or (*c*), that time is not a relevant time for the purposes of sections 361 and 362 unless the individual —

(*a*) is insolvent at that time; or

(*b*) becomes insolvent in consequence of the transaction or preference.

(3) Where a transaction is entered into at an undervalue by an individual with a person who is an associate of the individual (otherwise than by reason only of being the individual's employee), the requirements under subsection (2) are presumed to be satisfied unless the contrary is shown.

(4) For the purposes of subsection (2), an individual is insolvent if —

(*a*) the individual is unable to pay his or her debts as they fall due; or

(*b*) the value of the individual's assets is less than the amount of his or her liabilities, taking into account his or her contingent and prospective liabilities.

(5) Where any of the periods mentioned in subsection (6) in respect of an individual coincides with any period mentioned in subsection (1)(*a*), (*b*) or (*c*) in respect of the individual, the time at which a transaction at an undervalue is entered into or an unfair preference is given by that individual is a relevant time if that transaction is entered into or that preference is given during the period, immediately preceding that period mentioned in subsection (1)(*a*), (*b*) or (*c*) (as the case may be) that is equal to the aggregate of all such periods mentioned in subsection (6) coinciding with the period mentioned in subsection (1)(*a*), (*b*) or (*c*), as the case may be.

(6) The periods mentioned in subsection (5) are as follows:

(*a*) the period during which an order under section 278 staying any bankruptcy application is in force;

(*b*) the period during which an interim order on an application under section 276 is in force in relation to the individual.

(7) In this section, "relevant bankruptcy application" means the bankruptcy application made against an individual that resulted in the debt repayment scheme mentioned in section 312(*d*) in respect of that individual.

Meaning of associate

364.—(1) For the purposes of sections 362, 363 and 365, any question whether a person is an associate of another person is to be determined in accordance with this section.

(2) A person is an associate of an individual if that person is —

(*a*) the individual's spouse; or

(*b*) a relative of —

(i) the individual; or

(ii) the individual's spouse; or

(*c*) the spouse of a relative of —

(i) the individual; or

(ii) the individual's spouse.

(3) A person is an associate of —

(*a*) any individual with whom the person is in partnership; and

(*b*) any spouse or relative of any individual with whom the person is in partnership.

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

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

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

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

(*a*) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as that person's child; and

(*b*) an illegitimate child as the legitimate child of the child's mother and reputed father.

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

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

(*a*) the directors of *C* or of another company which has control of *C* (or any of those directors) are accustomed to act in accordance with the individual's directions or instructions; or

(*b*) the individual is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general

meeting of *C* or of another company which has control of *C*,

and where 2 or more persons together satisfy paragraph (*a*) or (*b*), they are taken to have control of *C*.

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

Orders under sections 361 and 362

365.—(1) Without limiting sections 361(2) and 362(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may, subject to this section —

(*a*) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the Official Assignee;

(*b*) require any property to be so vested if it represents in any person's hands the application of the proceeds of sale of property so transferred or of money so transferred;

(*c*) release or discharge (in whole or in part) any security given by the individual;

(*d*) require any person to pay, in respect of benefits received by the person from the individual, such sums to the Official Assignee as the Court may direct;

(*e*) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the Court thinks appropriate;

(*f*) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or

charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference; and

(*g*) provide for the extent to which any person whose property is vested by the order in the Official Assignee, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the unfair preference.

(2) An order under section 361 or 362 may affect the property of, or impose any obligation on, any person whether or not that person is the person with whom the individual in question entered into the transaction or (as the case may be) the person to whom the unfair preference was given.

(3) An order under section 361 or 362 does not —

(*a*) prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

(*b*) require a person who received a benefit from the transaction or unfair preference in good faith and for value to pay a sum to the Official Assignee, except where the person was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when that person was a creditor of that individual.

(4) For the purposes of subsection (3)(*a*) and (*b*), a person (called in this section the relevant person) who has acquired an interest in property from a person other than the individual in question, or who has received a benefit from the transaction or unfair preference, is presumed (unless the contrary is shown) to have acquired the interest or received the benefit (as the case may be) otherwise than in good faith if, at the time of the acquisition or receipt —

(*a*) the relevant person had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(*b*) the relevant person was an associate of, or was connected with —

(i) the individual in question; or

(ii) the person with whom the individual in question entered into the transaction, or to whom the individual gave the unfair preference, as the case may be.

(5) Any sums required to be paid to the Official Assignee in accordance with an order under section 361 or 362 are to be comprised in the bankrupt's estate.

(6) For the purposes of subsection (4)(*a*), the relevant surrounding circumstances are —

(*a*) the fact that the individual in question entered into the transaction at an undervalue; or

(*b*) the circumstances which amounted to the giving of the unfair preference by the individual in question.

(7) For the purposes of subsection (4)(*a*), the relevant person has notice of the relevant proceedings if the relevant person has notice of —

(*a*) the making of the bankruptcy application on which the individual in question is adjudged bankrupt; or

(*b*) the fact that the individual in question has been adjudged bankrupt.

(8) Despite section 364(1), for the purposes of subsection (4)(*b*)(ii), a company is regarded as an associate of another company if —

(*a*) the same person controls both companies;

(*b*) a person controls one company and either an associate of that person controls, or that person and the associate control, the other company; or

(*c*) each company is controlled by a group of 2 or more persons, and the groups —

(i) consist of the same persons; or

(ii) can be regarded as consisting of the same persons if (in one or more cases) a member of either group is replaced by an associate of that member.

(9) For the purposes of subsection (4)(*b*), the relevant person is connected with a company if the relevant person —

(*a*) is a director of the company; or

(*b*) is an associate of —

(i) the company; or

(ii) a director of the company.

(10) In subsection (9), "director" has the meaning given by section 4(1) of the Companies Act.

Extortionate credit transactions

366.—(1) This section applies where a person who is adjudged bankrupt is or has been a party to a transaction for or involving the provision to that person of credit.

(2) The Court may, on the application of the Official Assignee, make an order with respect to the transaction if the transaction is or was extortionate and was entered into within 3 years before the commencement of the bankruptcy.

(3) For the purposes of this section, a transaction is presumed to be extortionate, unless the contrary is proved, if, having regard to the risk accepted by the person providing the credit —

(*a*) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(*b*) it is harsh and unconscionable or substantially unfair.

(4) An order under this section may contain one or more of the following:

(*a*) provision setting aside the whole or part of any obligation created by the transaction;

(*b*) provision varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(*c*) provision requiring any person who is or was party to the transaction to pay the Official Assignee any sums paid to that person;

(*d*) provision requiring any person to surrender to the Official Assignee any property held by that person as security for the purposes of the transaction;

(*e*) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the Official Assignee in accordance with an order under this section are to be comprised in the bankrupt's estate.

Restriction of rights of creditor under execution or attachment

367.—(1) Where the creditor of a bankrupt has issued execution against the goods or lands of the bankrupt or has attached any debt due or property belonging to the bankrupt, the creditor is not entitled to retain the benefit of the execution or attachment against the Official Assignee unless the creditor has completed the execution or attachment before the date of the bankruptcy order, except that —

(*a*) a person who purchases in good faith under a sale by the Sheriff any goods of a bankrupt on which an execution has been levied acquires a good title in all cases to them against the Official Assignee; and

(*b*) the rights conferred by this subsection on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this Act —

(*a*) an execution against goods is completed by seizure and sale;

(*b*) an attachment of a debt is completed by receipt of the debt; and

(*c*) an execution against land or any interest in land is completed by registering under any written law relating to the registration of land a writ of seizure and sale attaching the interest of the bankrupt in the land described in the writ of seizure and sale.

Duties of Sheriff as to property taken in execution

368.—(1) Where any property of a debtor is taken in execution, then, if before the completion of the execution, notice is given to the Sheriff that a bankruptcy order has been made against the debtor, the Sheriff must deliver the property or the possession of the property and any such moneys to the Official Assignee.

(2) The costs of and incidental to the execution under subsection (1) are a first charge on the property or moneys, and the Official Assignee may sell the property or any adequate part of the property for the purpose of satisfying the charge.

(3) Where a writ of seizure and sale has been issued in respect of a judgment for a sum exceeding $2,000, the Sheriff must hold all moneys coming to the Sheriff's hands under the writ of seizure and sale for 14 days starting from the receipt of the moneys.

(4) If within the time mentioned in subsection (3) —

(*a*) notice is served on the Sheriff of a bankruptcy application having been made against or by the debtor; and

(*b*) a bankruptcy order is made against the debtor on the bankruptcy application or on any other application of which the Sheriff has notice,

the Sheriff must deduct the costs of and incidental to the execution and pay the balance to the Official Assignee, who is entitled to retain the same as against the execution creditor.

Division 7 — Possession, control and realisation of bankrupt's property

Possession of property by Official Assignee

369.—(1) The Official Assignee must forthwith after the bankruptcy order, take possession of —

(*a*) the deeds, books and documents which relate to the bankrupt's estate or affairs and which belong to the bankrupt or are under the bankrupt's control (including any which would be privileged from disclosure in any proceedings); and

(*b*) all other parts of the bankrupt's property capable of manual delivery.

(2) The Official Assignee is, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, in the same position as if the Official Assignee were a receiver of the property appointed by the Court, and the Court may on the Official Assignee's application enforce the acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the Official Assignee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if the bankrupt had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, those things are deemed to have been duly assigned to the Official Assignee.

(5) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt must pay and deliver to the Official Assignee all moneys and securities in the possession or under the control of the banker, agent or other person which the banker, agent or other person (as the case may be) is not by law entitled to retain as against the bankrupt or the Official Assignee.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

Seizure of bankrupt's property held by bankrupt or other person

370.—(1) At any time after a bankruptcy order has been made, the Official Assignee or any person authorised by the Official Assignee may take an inventory of and seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt (including any which would be privileged from disclosure in any proceedings) or any other person who is required to deliver the property, books, papers or records to the Official Assignee.

(2) The Official Assignee or any person authorised by the Official Assignee may, for the purposes of taking an inventory of or seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs (including any which would be privileged from disclosure in any proceedings), break open any premises where the bankrupt or anything that may be seized under subsection (1) is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the Court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs (including any which would be privileged from disclosure in any proceedings) are, concealed in any premises not belonging to the bankrupt, the Court may issue a warrant authorising any public officer to search those premises for the property, books, papers or records.

(4) A warrant under subsection (3) must be executed in accordance with the Rules and in accordance with its terms.

Payment of monthly contribution

371.—(1) Subject to subsection (2), a bankrupt who is not discharged must pay to the Official Assignee, on or before such day

of each month as the Official Assignee may specify in writing, an amount not less than the bankrupt’s monthly contribution.

(2) Where the target contribution for a bankruptcy has been paid in full, whether through payments by the bankrupt or otherwise, subsection (1) ceases to apply to the bankrupt.

(3) To avoid doubt, subsection (1) does not prevent any person other than the bankrupt from paying, to the Official Assignee, any amount towards the bankrupt’s target contribution.

Appropriation of portion of pay or salary to creditors

372.—(1) Where the bankrupt is an officer of the Singapore Armed Forces or a public officer or otherwise employed or engaged in the public service of the Government, the Official Assignee is to receive for distribution amongst the creditors so much of the bankrupt’s pay or salary as the Court, on the application of the Official Assignee, directs.

(2) Where a bankrupt is —

(*a*) in receipt of a salary or income other than as mentioned in subsection (1); or

(*b*) entitled to any half-pay, pension or compensation granted by the Government or any other employer,

the Court may, on the application of the Official Assignee, subject to any written law relating to pensions, make such order as the Court thinks just for the payment of the salary, income, half-pay, pension or compensation or of any part of the salary, income, half-pay, pension or compensation to the Official Assignee, to be applied by the Official Assignee in such manner as the Court directs.

(3) Nothing in this section abrogates the right of the Government to dismiss a bankrupt or to declare the half-pay, pension or compensation of any bankrupt to be forfeited.

(4) In fixing the amount to be received by the Official Assignee under this section, the Court, without affecting subsection (5)(*a*) but subject to subsection (5)(*b*), is to have regard to the scale of appropriation of salary in any regulation made for the purposes of this section by the Minister under section 449.

(5) The Court —

(*a*) may, in its discretion, fix a larger or smaller amount than the amount provided in the scale; but

(*b*) must not do any of the following:

(i) order the payment, on a monthly basis out of the bankrupt's monthly income, of any amount which exceeds the bankrupt's monthly contribution;

(ii) order the payment of any amount which exceeds the difference between the bankrupt's target contribution and what has been paid towards the bankrupt's target contribution;

(iii) order the payment of any amount that is needed for the maintenance of the bankrupt and the bankrupt's family.

Power to disclaim onerous property

373.—(1) The Official Assignee may, by the giving of the prescribed notice, disclaim any onerous property and may do so despite having taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this section:

(*a*) any unprofitable contract;

(*b*) any other property comprised in the bankrupt's estate which —

(i) is unsaleable;

(ii) is not readily saleable; or

(iii) may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this section —

(*a*) determines, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and the bankrupt's estate in or in respect of the property disclaimed; and

(*b*) discharges the Official Assignee from all personal liability in respect of that property as from the commencement of the Official Assignee's trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the Official Assignee from any liability, affect the rights and liabilities of any other person.

(4) A notice of disclaimer may not be given under subsection (1) in respect of any property —

(*a*) in the case of property subject to any written law set out in the first column of the Second Schedule, unless —

(i) the Official Assignee has given written notice of the Official Assignee's intention to disclaim the property, to the relevant person set out opposite in the second column; and

(ii) a period of 28 days starting on the date of the notice mentioned in sub-paragraph (i) has elapsed; or

(*b*) in any case, if —

(i) a person interested in the property has applied in writing to the Official Assignee or one of the Official Assignee's predecessors as trustee requiring the Official Assignee or that predecessor to decide whether or not the Official Assignee or that predecessor will disclaim the property; and

(ii) the notice of disclaimer is not given under this section in respect of that property within a period of 28 days, or such longer period as the Court may allow, starting on the date of the application mentioned in sub-paragraph (i).

(5) The Official Assignee is deemed to have adopted any contract which by virtue of this section the Official Assignee is not entitled to disclaim.

(6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor

of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

Disclaimer of leaseholds

374.—(1) A disclaimer under section 373 of any property of a leasehold nature does not take effect unless a copy of the notice of disclaimer has been served (so far as the Official Assignee is aware of their addresses) on every person claiming under the bankrupt as sub-lessee or mortgagee and either —

(*a*) no application under section 375 is made with respect to the property before the end of the period of 14 days starting on the date on which the last notice served under this subsection was served; or

(*b*) where an application under section 375 has been made, the Court directs that the disclaimer is to take effect.

(2) Where the Court gives a direction under subsection (1)(*b*), the Court may also, instead of or in addition to any order the Court makes under section 375, make such orders with respect to fixtures, tenant's improvements and other matters arising out of lease as the Court thinks fit.

Court order vesting disclaimed property

375.—(1) This section and section 376 apply where the Official Assignee has disclaimed property under section 373.

(2) An application may be made to the Court under this section by —

(*a*) any person who claims an interest in the disclaimed property;

(*b*) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer; or

(*c*) where the disclaimed property is property in a dwelling-house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling-house.

(3) The Court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to —

(*a*) a person entitled to the disclaimed property or a trustee for such a person;

(*b*) a person subject to such a liability as is mentioned in subsection (2)(*b*) or a trustee for such a person; or

(*c*) where the disclaimed property is property in a dwelling-house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling-house.

(4) The Court may not make any order by virtue of subsection (3)(*b*) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section is to be taken into account in assessing for the purposes of section 373(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person —

(*a*) need not be completed by any conveyance, assignment or transfer; but

(*b*) does not have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

Order under section 375 in relation to leaseholds

376.—(1) The Court must not make any order under section 375 vesting property of a leasehold nature in any person, except on terms making that person —

(*a*) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy order was made; or

(*b*) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to that person on that day.

(2) For the purposes of an order under section 375 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

(3) Where subsection (1) applies and no person is willing to accept an order under section 375 on the terms mentioned in subsection (1), the Court may (by order under section 375) vest the estate or interest of the bankrupt in the property in —

(*a*) any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease; or

(*b*) such person mentioned in paragraph (*a*) freed and discharged from all estates, encumbrances and interests created by the bankrupt.

(4) Where subsection (1) applies, and a person declines to accept any order under section 375, that person is excluded from all interest in the property.

Power of Official Assignee to deal with property

377.—(1) Subject to Parts 3 and 13 to 22, the Official Assignee may —

(*a*) sell all or any part of the property of a bankrupt, including the goodwill of the bankrupt's business, if any, and the book debts due or accruing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole of the property to any person or to sell the property in parcels;

(*b*) give receipts for any money received by the Official Assignee, being receipts which effectually discharge the person paying the money from all responsibility in respect of the application of the money;

(*c*) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

(*d*) exercise any power, the capacity to exercise which is vested in the Official Assignee under Parts 3 and 13 to 22, and execute any power of attorney, deeds and other instrument for the purpose of carrying into effect the provisions of those Parts; and

(*e*) deal with any property to which the bankrupt is beneficially entitled as tenant in tail, or other owner of an estate of inheritance less than an estate in fee simple, in the same manner as the bankrupt might have dealt with it.

(2) Any such dealing with any property mentioned in subsection (1)(*e*) to which the bankrupt is, before the bankrupt's discharge, so entitled is, although the bankrupt is dead at the time of that dealing, as valid and has the same operation as though the bankrupt were then alive.

General powers of Official Assignee

378. The Official Assignee may exercise any of the following powers:

(*a*) carry on any business of the bankrupt so far as is necessary for winding it up beneficially;

(*b*) bring, institute or defend any action or legal proceedings relating to the property of the bankrupt;

(*c*) employ an advocate and solicitor to take any proceedings or do any business;

(*d*) accept, as the consideration for the sale of any property of the bankrupt, a sum of money payable at a future time, subject to such stipulations as to security or otherwise as the Official Assignee thinks fit;

(*e*) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of the bankrupt's debts;

(*f*) refer any dispute to arbitration, or compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as are agreed on;

(*g*) make such compromise or other arrangement as is thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy;

(*h*) make such compromise or other arrangement as is thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the Official Assignee by any person or by the Official Assignee on any person;

(*i*) divide in its existing form, amongst the creditors according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Power to appoint special manager

379.—(1) The Official Assignee may, if satisfied that the nature of the bankrupt's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Official Assignee, appoint a manager of the estate or business to act, with such powers, including any of the powers of a receiver, as are entrusted to the manager by the Official Assignee.

(2) The bankrupt may be appointed special manager.

(3) A special manager must give such security and account in such manner as the Official Assignee may direct.

(4) The special manager is to receive such remuneration as the Official Assignee may determine.

Power to allow bankrupt to manage property and make allowance to bankrupt, etc.

380.—(1) The Official Assignee may appoint the bankrupt to superintend the management of the bankrupt's property or any part of the property, or to carry on the bankrupt's trade (if any) for the benefit of the bankrupt's creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Official Assignee directs.

(2) The Official Assignee may make such allowance as the Official Assignee thinks just to the bankrupt out of the bankrupt's property for the support of the bankrupt and the bankrupt's family, or in consideration of the bankrupt's service if the bankrupt is engaged in winding up the bankrupt's estate, but the Court may reduce the allowance and limit the time for which it may be made.

(3) Where the bankrupt has died, the Official Assignee may make an allowance to members of the bankrupt's family for their support.

(4) The Official Assignee may also make an allowance to defray the funeral expenses of the bankrupt.

(5) In fixing the amount of the allowance, the Official Assignee may take into account any assistance rendered by the bankrupt in the administration or management of the bankrupt's property or the carrying on of the bankrupt's trade.

Re-direction of bankrupt's letters, etc.

381.—(1) Where a bankruptcy order has been made, the Official Assignee may from time to time direct a postal licensee under the Postal Services Act (Cap. 237A) to re-direct and send or deliver to the Official Assignee or otherwise any postal article which would otherwise be sent or delivered by it to the bankrupt at such place or places as may be specified in the direction.

(2) A direction under this section has effect for such period, not exceeding 3 months, as may be specified in the direction.

Power to impound passport, etc., of bankrupt

382.—(1) The Official Assignee may, if the Official Assignee thinks it necessary for the purposes of ensuring that a bankrupt does not leave Singapore during the administration of the bankrupt's estate, issue a direction to the Controller of Immigration to request that the bankrupt be prevented from leaving Singapore.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, the Controller of Immigration must pursuant to the direction under subsection (1) take, or cause to be taken by any immigration officer, such measures as may be necessary to prevent the bankrupt named in the direction from leaving Singapore, including the detention of the bankrupt's passport, certificate of identity or travel document authorising the bankrupt to leave or enter Singapore.

(3) Where the Controller of Immigration has detained the passport, certificate of identity or other travel document of a bankrupt under subsection (2), the Controller must forthwith forward the passport, certificate of identity or travel document to the Official Assignee.

(4) Despite subsections (1), (2) and (3), the Official Assignee may, if the Official Assignee thinks fit, detain any passport, certificate of identity or other travel document authorising the bankrupt to leave or enter Singapore.

(5) The Official Assignee may, if the Official Assignee thinks fit, retain or return to the bankrupt the passport, certificate of identity or travel document forwarded to the Official Assignee by the Controller of Immigration under subsection (3) or detained by the Official Assignee under subsection (4).

Incurring expenses where property insufficient

383.—(1) Subject to this section and section 384, the Official Assignee is not liable to incur any expense in relation to the realisation and distribution of a bankrupt's property unless there is sufficient available property in the bankrupt's estate.

(2) The Court may, on the application of a creditor, direct the Official Assignee to incur a particular expense on condition that the

creditor indemnifies the Official Assignee in respect of the recovery of the amount expended and, if the Court so directs, gives such security to secure the amount of the indemnity as the Court thinks reasonable.

(3) Nothing in this section relieves the Official Assignee of any obligation under section 339, 340, 341, 342, 343 or 344.

(4) Nothing in this section relieves a trustee in bankruptcy of any obligation to submit or serve a document (including a report) to or on the Official Assignee under any provision of Parts 3 and 16 to 22 by reason only that the trustee in bankruptcy would be required to incur expense in order to perform that obligation.

Official Assignee not to incur further expenses if majority in value of debts owed to institutional creditors

384.—(1) The Official Assignee is not liable to incur any expense in relation to the realisation and distribution of a bankrupt's property, other than expenses in relation to payments made towards the target contribution —

(*a*) if, and only so long as, the relevant condition is met; and

(*b*) if the Official Assignee has given to every creditor who has filed a proof of debt, a notice in writing in accordance with subsection (2).

(2) After the expiry of the time within which creditors are required under section 347(2) to file their proof of debt, if the Official Assignee is satisfied that the relevant condition is met, the Official Assignee may give to each of the bankrupt's creditors who has filed a proof of debt, a notice in writing —

(*a*) informing the creditors that the Official Assignee is satisfied that the relevant condition is met;

(*b*) informing the creditors that they may wish to consider making an application under section 36 for the appointment of a person other than the Official Assignee to act as the trustee of the bankrupt's estate; and

(*c*) providing a summary of the administration of the bankrupt's estate that contains such particulars as may be prescribed.

(3) Nothing in this section relieves the Official Assignee of any obligation under section 339, 340, 341, 342, 343, 344 or 347.

(4) In this section —

"institutional creditor" has the meaning given by section 36(4), except that the reference, in paragraph (*d*)(ii) of the definition of "institutional creditor" in that section, to the date of the application for the bankruptcy order mentioned in section 36(2) is to be read as a reference to the date of the bankruptcy application on which the bankrupt was adjudged bankrupt;

"relevant condition" means a majority in value of the total debts of the bankrupt that have been proved (and are not withdrawn) are owed to one or more persons who are either an institutional creditor or a subsidiary of an institutional creditor.

Division 8 — Distribution of property

Distribution by means of dividend

385.—(1) Whenever the Official Assignee has sufficient funds in hand for the purpose, the Official Assignee must, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the debts which the creditors have respectively proved.

(2) The Official Assignee must give notice of the Official Assignee's intention to declare and distribute a dividend.

(3) Where the Official Assignee has declared a dividend, the Official Assignee must give notice of the dividend and of how the Official Assignee proposes to distribute it.

(4) The notice given under subsection (3) must contain the prescribed particulars of the bankrupt's estate.

(5) In the calculation and distribution of a dividend, the Official Assignee must make provision —

(*a*) for any provable debt which is the subject of any claim which has not yet been determined; and

(*b*) for disputed proofs and claims.

(6) No dividend is to be paid to any creditor which does not amount to $50.

Claims by unsatisfied creditors

386.—(1) A creditor who has not proved the creditor's debt before the declaration of any dividend is not entitled to disturb, by reason that the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the debt was proved.

(2) When a creditor has proved the creditor's debt, the creditor is entitled to be paid out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive.

(3) Any dividend or dividends payable under subsection (2) must be paid before that money is applied to the payment of any such further dividend.

Final distribution

387.—(1) When the Official Assignee has realised all the bankrupt's estate or so much of it as can, in the opinion of the Official Assignee, be realised without needlessly protracting the proceedings in bankruptcy, the Official Assignee may give notice in the prescribed manner of the Official Assignee's intention to declare a final dividend.

(2) The notice under subsection (1) must contain the prescribed particulars and must require claims against the bankrupt's estate to be established by a date (called in this section the final date) specified in the notice.

(3) The Court may, on the application of any person, postpone the final date.

(4) After the final date, the Official Assignee must —

(*a*) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(*b*) if the Official Assignee intends to declare a final dividend, declare and distribute that dividend without regard to the

claim of any person in respect of a debt not already proved in the bankruptcy.

Joint and separate dividends

388.—(1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, is not entitled to receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties are, subject to any order to the contrary that is made by the Court on the application of the Official Assignee or any person interested, to be declared together.

(3) The expenses of and incidental to the dividends are to be fairly apportioned by the Official Assignee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

No action for dividend

389.—(1) No action for a dividend lies against the Official Assignee.

(2) If the Official Assignee refuses to pay any dividend, the Court may, if it thinks fit, order the Official Assignee to pay the dividend, and also to pay out of the Consolidated Fund interest on the dividend for the period that it is withheld and the costs of the application to the Court.

Payment of interest exceeding what is allowed under section 356 out of surplus

390.—(1) Where any amount remains after the debts and expenses of the bankruptcy have been paid (called in this section the surplus), the interest mentioned in subsection (2) must be paid before the bankrupt is entitled under section 391 to any of the surplus.

(2) The surplus is to be paid towards interest on each debt proved in bankruptcy, from (and including) the day after the date of the

bankruptcy order to (and including) the date that debt was paid, calculated at such rate of interest as the creditor may be entitled under an agreement or, in the absence of any such agreement, at such rate as may be prescribed.

(3) For the purposes of subsection (2) —

(*a*) interest on preferential debts ranks equally with interest on other debts;

(*b*) interest of the same class ranks equally between themselves; and

(*c*) if the surplus is insufficient to pay all interest of the same class, the interest in that class is to abate in equal proportions between themselves.

Right of bankrupt to surplus

391.—(1) The bankrupt is entitled to any surplus remaining after payment in full of the bankrupt's creditors, with interest as provided by Parts 3 and 13 to 22, and of the costs, charges and expenses of the proceedings under the bankruptcy application.

(2) Despite subsection (1), the Court may make an order directing the Official Assignee not to pay the surplus or part of the surplus to the bankrupt if —

(*a*) the Attorney-General applies for an order under this section; and

(*b*) the Court is satisfied that —

(i) proceedings under any written law dealing with confiscation of the proceeds of crime are pending; and

(ii) the property of the bankrupt may become subject to a confiscation order or be required to meet some other order made on those proceedings.

(3) The Court may, on an application, vary or revoke an order made under subsection (2).

PART 18

ANNULMENT AND DISCHARGE

Court's power to annul bankruptcy order

392.—(1) The Court may annul a bankruptcy order if it appears to the Court that —

(*a*) on any ground existing at the time the order was made, the order ought not to have been made;

(*b*) to the extent required by the regulations, both the debts and the expenses of the bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the Court;

(*c*) proceedings are pending in Malaysia for the distribution of the bankrupt's estate and effects amongst the creditors under the bankruptcy law of Malaysia and that the distribution ought to take place there; or

(*d*) a majority of the creditors in number and value are resident in Malaysia, and that from the situation of the property of the bankrupt or for other causes the bankrupt's estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.

(2) An application to annul a bankruptcy order under subsection (1)(*a*) must be made to the Court within 12 months after the making of the bankruptcy order, unless the Court gives leave for the application to be made later.

(3) The Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(4) Where the Court annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the Court is valid, except that the property of the bankrupt vests in such person as the Court may appoint or, in default of any such appointment, reverts to the bankrupt on such terms as the Court may direct.

(5) The Court may include in its order such supplemental provisions as may be authorised by the Rules.

Annulment of bankruptcy order by certificate of Official Assignee where debts and expenses fully paid

393.—(1) The Official Assignee may issue a certificate annulling a bankruptcy order if it appears to the Official Assignee that, to the extent required by the regulations, the debts which have been proved and the expenses of the bankruptcy have all, since the making of the order, been paid.

(2) Notice of every certificate of annulment under subsection (1) must be given to the Registrar and be published in the *Gazette* and in such other manner as the Official Assignee thinks fit.

(3) The Official Assignee must, upon an application of a bankrupt or a bankrupt's creditor, issue to the applicant a copy of the certificate of annulment upon the payment of the prescribed fee.

(4) A certificate of annulment issued under subsection (1) is binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy.

(5) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the Court is valid, except that the property of the bankrupt reverts to the bankrupt or, on an application by any person interested, vests in such person as the Court may appoint and on such terms as the Court may direct.

(6) The Court may include in its order such supplemental provisions as may be authorised by the regulations.

Discharge by Court

394.—(1) The Official Assignee, the bankrupt or any other person having an interest in the matter may, at any time after the making of a bankruptcy order, apply to the Court for an order of discharge.

(2) Every such application must be served on each creditor who has filed a proof of debt and on the Official Assignee if the Official

Assignee is not the applicant, and the Court must hear the Official Assignee and any creditor before making an order of discharge.

(3) Subject to subsection (4), on an application under this section, the Court may —

(*a*) refuse to discharge the bankrupt from bankruptcy;

(*b*) make an order discharging the bankrupt absolutely; or

(*c*) make an order discharging the bankrupt subject to such conditions as the Court thinks fit to impose, including conditions with respect to —

(i) any income which may be subsequently due to the bankrupt; or

(ii) any property devolving upon the bankrupt, or acquired by the bankrupt, after the bankrupt's discharge,

as may be specified in the order.

(4) Where the bankrupt has committed an offence under Parts 13 to 21 of this Act or under section 421, 422, 423 or 424 of the Penal Code or upon proof of any of the facts mentioned in subsection (5), the Court must —

(*a*) refuse to discharge the bankrupt from bankruptcy;

(*b*) make an order discharging the bankrupt subject to —

(i) one or more of the following conditions as may be specified in the order:

(A) the bankrupt paying a dividend to the bankrupt's creditors of not less than 25%;

(B) the payment of any income which may be subsequently due to the bankrupt, or with respect to property devolving upon or acquired by the bankrupt, after the bankrupt's discharge; and

(ii) such other conditions as the Court thinks fit to impose; or

(*c*) if the Court is satisfied that the bankrupt is unable to fulfil any condition specified in paragraph (*b*) and if the Court thinks fit, make an order discharging the bankrupt subject to such conditions as the Court thinks fit to impose.

(5) The facts mentioned in subsection (4) are the following:

(*a*) that the bankrupt has omitted to keep such books of accounts as would sufficiently disclose his or her business transactions and financial position within the 3 years immediately preceding his or her bankruptcy, or within such shorter period immediately preceding that event as the Court may consider reasonable in the circumstances;

(*b*) that the bankrupt has continued to trade after knowing or having reason to believe himself or herself to be insolvent;

(*c*) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable ground of expectation (which is for the bankrupt to prove) of being able to pay it;

(*d*) that the bankrupt has brought on or contributed to his or her bankruptcy by rash speculations or extravagance in living, or by recklessness, or want of reasonable care and attention to his or her business and affairs;

(*e*) that the bankrupt has delayed or put any of his or her creditors to unnecessary expense by a frivolous or vexatious defence to any action or other legal proceedings properly brought or instituted against him or her;

(*f*) that the bankrupt has, within 3 months immediately before the date of the bankruptcy order, when unable to pay his or her debts as they became due, given an undue preference to any of his or her creditors;

(*g*) that the bankrupt has, in Singapore or elsewhere on any previous occasion, been adjudged bankrupt or made a composition or an arrangement with his or her creditors;

(*h*) that the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(*i*) that the bankrupt has, within 3 months immediately before the date of the bankruptcy order, sent goods out of Singapore under circumstances which afford reasonable grounds for believing that the transaction was not a bona fide commercial transaction;

(*j*) that the bankrupt's assets are not of a value equal to 20% of the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the Court that the fact that the assets are not of a value equal to 20% of the bankrupt's unsecured liabilities has arisen from circumstances for or in respect of which the bankrupt cannot be blamed;

(*k*) that the bankrupt has entered into a transaction with any person at an undervalue within the meaning of section 361;

(*l*) that the bankrupt has given an unfair preference to any person within the meaning of section 362.

(6) The Court may, at any time before an order of discharge takes effect, rescind or vary the order.

Discharge by certificate of Official Assignee

395.—(1) The Official Assignee may, in his or her discretion and subject to section 396, issue a certificate discharging a bankrupt from bankruptcy.

(2) The Official Assignee must not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless —

(*a*) in any case where the bankruptcy is not a repeat bankruptcy of the bankrupt —

(i) both of the following apply:

(A) the target contribution has been paid in full, or the Official Assignee is satisfied that the bankrupt is unable to pay the target contribution in full due to extenuating circumstances;

(B) either —

(BA) a period of 3 years has lapsed after the administration date of the bankruptcy, and no objection to the discharge is entered by the relevant threshold of creditors; or

(BB) a period of 5 years has lapsed after the administration date of the bankruptcy; or

(ii) a period of 7 years has lapsed after the administration date of the bankruptcy; or

(*b*) in any case where the bankruptcy is a repeat bankruptcy of the bankrupt —

(i) both of the following apply:

(A) the target contribution has been paid in full, or the Official Assignee is satisfied that the bankrupt is unable to pay the target contribution in full due to extenuating circumstances;

(B) either —

(BA) a period of 5 years has lapsed after the administration date of the bankruptcy, and no objection to the discharge is entered by the relevant threshold of creditors; or

(BB) a period of 7 years has lapsed after the administration date of the bankruptcy; or

(ii) a period of 9 years has lapsed after the administration date of the bankruptcy.

(3) Notice of every discharge under subsection (1) must be given to the Registrar and be published in the *Gazette* and in such other manner as the Official Assignee thinks fit.

(4) The Official Assignee —

(*a*) must, upon the application of a bankrupt, any creditor of the bankrupt or any other interested person, and upon the payment of the prescribed fee, issue to the applicant a copy of the certificate discharging the bankrupt from bankruptcy; but

(*b*) must not issue any copy of such certificate to any person except the bankrupt, where —

(i) the bankrupt's target contribution was paid in full before the bankrupt's discharge from bankruptcy; and

(ii) 5 years have lapsed after the date of discharge.

(5) For the purposes of calculating the periods of time mentioned in subsection (2), there must be disregarded any period —

(*a*) during which the bankrupt was outside Singapore; and

(*b*) for which the bankrupt did not obtain the Official Assignee's permission to leave, remain or reside outside Singapore.

(6) In this section —

"extenuating circumstances" means any of the following circumstances:

(*a*) the death of the bankrupt;

(*b*) any personal circumstances of the bankrupt (including, but not limited to, debilitating illness) that prevent the bankrupt from earning a meaningful salary for the remaining period of the bankruptcy before the expiry of —

(i) where the bankruptcy is not a repeat bankruptcy of the bankrupt, the period mentioned in subsection (2)(*a*)(ii); or

(ii) where the bankruptcy is a repeat bankruptcy of the bankrupt, the period mentioned in subsection (2)(*b*)(ii);

"relevant threshold of creditors" means not less than half in number or more than one-fourth in value, or both, of the creditors who have proved their debts.

Objection by creditor to discharge of bankrupt under section 395

396.—(1) Before issuing a certificate of discharge under section 395 in respect of any bankruptcy administered by the Official Assignee, the Official Assignee must serve on each creditor who has filed a proof of debt a notice of the Official Assignee's intention to discharge the bankrupt, together with a statement of the Official Assignee's reasons for wanting to do so.

(2) A creditor who has been served with a notice under subsection (1) and who wishes to enter an objection to the Official Assignee issuing a certificate discharging the bankrupt may, within 21 days after the date of the Official Assignee's notice, furnish the Official Assignee a statement of the grounds of the creditor's objection.

(3) A creditor who does not furnish to the Official Assignee a statement of the grounds of the creditor's objection in accordance with subsection (2) is deemed to have no objection to the discharge.

(4) A creditor who has furnished the Official Assignee with a statement of the grounds of the creditor's objection in accordance with subsection (2) may, within 21 days after being informed by the Official Assignee that the objection has been rejected, make an application to the Court for an order prohibiting the Official Assignee from issuing the certificate of discharge.

(5) Every application under subsection (4) must be served on the Official Assignee and on the bankrupt, and the Court must hear the Official Assignee and the bankrupt before making an order on the application.

(6) Before requesting the Official Assignee to issue a certificate of discharge under section 395, a trustee in bankruptcy administering a bankrupt's estate must serve, on each creditor who has filed a proof of debt, a notice of the trustee's intention to request the Official Assignee

to discharge the bankrupt, together with a statement of the trustee's reasons why the bankrupt ought to be discharged.

(7) A creditor who has been served with a notice under subsection (6) and who wishes to enter an objection to the Official Assignee issuing a certificate discharging the bankrupt may, within 21 days after the date of the trustee's notice, furnish to the trustee in bankruptcy a statement of the grounds of the creditor's objection.

(8) A creditor who does not furnish to the trustee in bankruptcy a statement of the grounds of the creditor's objection in accordance with subsection (7) is deemed to have no objection to the discharge.

(9) A creditor who has furnished the trustee in bankruptcy with a statement of the grounds of the creditor's objection in accordance with subsection (7) may, within 21 days after being informed by the trustee that the creditor's objection has been rejected, make an application to the Court for an order prohibiting the Official Assignee from issuing the certificate of discharge.

(10) Every application under subsection (9) must be served on the Official Assignee, the trustee in bankruptcy and the bankrupt, and the Court must hear the Official Assignee, the trustee and the bankrupt before making an order on the application.

(11) On an application made under subsection (4) or (9), the Court may, if it thinks it just and expedient —

(*a*) dismiss the application;

(*b*) subject to subsections (13) and (14), make an order that the bankrupt must not be granted a certificate of discharge by the Official Assignee for a period not exceeding 2 years; or

(*c*) make an order permitting the Official Assignee to issue a certificate discharging the bankrupt but subject to such conditions as the Court thinks fit to impose, including conditions with respect to —

(i) any income which may be subsequently due to the bankrupt after the bankrupt's discharge; or

(ii) any property devolving upon the bankrupt, or acquired by the bankrupt, after the bankrupt's discharge,

as may be specified in the order.

(12) The Court must, when making an order under subsection (11)(*b*) on an application under subsection (4), appoint a trustee in bankruptcy to administer the bankrupt's estate in place of the Official Assignee.

(13) Subject to subsection (14), an order made under subsection (11)(*b*) must not postpone the grant of the certificate of discharge beyond —

(*a*) in any case where the bankruptcy is not a repeat bankruptcy of the bankrupt, 9 years after the administration date of the bankruptcy; or

(*b*) in any case where the bankruptcy is a repeat bankruptcy of the bankrupt, 11 years after the administration date of the bankruptcy.

(14) When making an order under subsection (11)(*b*), the Court may, in an exceptional case, postpone the grant of the certificate of discharge beyond the period mentioned in subsection (13)(*a*) or (*b*), but not beyond the period mentioned in subsection (11)(*b*), if the Court, having regard to the conduct of the bankrupt, considers it just to do so.

(15) For the purposes of calculating the periods of time mentioned in subsection (13), there must be disregarded any period —

(*a*) during which the bankrupt was outside Singapore; and

(*b*) for which the bankrupt did not obtain the Official Assignee's permission to leave, remain or reside outside Singapore.

Effect of discharge

397.—(1) Subject to this section and any condition imposed by the Court under section 394 or 396, where a bankrupt is discharged, the

discharge releases the bankrupt from all the debts provable in the bankruptcy but has no effect —

(*a*) on the functions (so far as they remain to be carried out) of the Official Assignee; or

(*b*) on the operation, for the purposes of the carrying out of those functions, of the provisions of Parts 3 and 13 to 22.

(2) Discharge does not release the bankrupt from —

(*a*) any debt due to the Government;

(*b*) any debt with which the bankrupt may be chargeable at the suit of —

(i) the Government or any other person for any offence under any written law relating to any branch of the public revenue; or

(ii) the Sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and

(*c*) a debt in respect of any premium (including interest and penalties for late payment) and other sums due under the MediShield Life Scheme Act 2015.

(3) A bankrupt may be discharged from any debt mentioned in subsection (2) only by a certificate in writing of the Minister.

(4) Discharge does not affect the right of any secured creditor of the bankrupt to enforce the secured creditor's security for the payment of a debt from which the bankrupt is released.

(5) Discharge does not release the bankrupt from —

(*a*) any provable debt which the bankrupt incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which the bankrupt was party; or

(*b*) any liability in respect of a fine imposed for an offence.

(6) Discharge does not, except to such extent and on such conditions as the Court may direct, release the bankrupt from any debt which has been proved and which —

(*a*) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person;

(*b*) arises under any order made in proceedings under the Women's Charter (Cap. 353) relating to family matters; or

(*c*) arises under an order involving pecuniary liability made under any written law relating to the confiscation of the proceeds of crime.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) For the purpose of subsection (6), "personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

Discharged bankrupt to give assistance

398.—(1) A discharged bankrupt must, despite his or her discharge, give assistance as the Official Assignee requires in the realisation and distribution of such of his or her property as is vested in the Official Assignee.

(2) If the discharged bankrupt fails to give assistance to the Official Assignee under subsection (1) —

(*a*) the discharged bankrupt shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000; and

(*b*) the Court may, if it thinks fit, revoke the discharged bankrupt's discharge, but without affecting the validity of any sale, disposition or payment duly made, or thing duly done subsequent to the discharge, but before its revocation.

PART 19

DUTIES, DISQUALIFICATION AND DISABILITIES OF BANKRUPT

Duties of bankrupt

399.—(1) A bankrupt must, in addition to any other duty specified in Parts 3 and 13 to 21 —

(*a*) make discovery of and deliver all of the bankrupt's property that is under the bankrupt's possession or control to the Official Assignee;

(*b*) deliver to the Official Assignee all books, records, documents, writings and papers including (but not limited to), any document or deed of title, insurance policy, tax record or return, and any copy of any such document, deed, policy, record or return in any way relating to the bankrupt's property or affairs;

(*c*) at such time and place as may be fixed by the Official Assignee, attend before the Official Assignee and answer such questions as the Official Assignee may put to the bankrupt with respect to the bankrupt's affairs, dealings and property and the causes of the bankrupt's bankruptcy;

(*d*) make or give all the assistance within the bankrupt's power to the Official Assignee in making an inventory of the bankrupt's assets;

(*e*) disclose to the Official Assignee all property disposed of within such time preceding the bankruptcy as the Official Assignee may require, and how and to whom and for what consideration any part of such property was disposed of, except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(*f*) disclose to the Official Assignee all property disposed of by gift or settlement without adequate valuable consideration within the 5 years immediately preceding the bankruptcy;

(*g*) attend any meeting of the bankrupt's creditors as may be convened by the Official Assignee under section 330,

unless prevented by sickness or other sufficient cause and submit to examination at the meeting;

(*h*) when required, attend any other meeting of the bankrupt's creditors;

(*i*) aid the Official Assignee in the realisation of the bankrupt's property and the distribution of the proceeds among the bankrupt's creditors;

(*j*) execute such powers of attorney, conveyances, deeds and instruments as may be required by the Official Assignee;

(*k*) examine the correctness of all proofs of claims filed, if required by the Official Assignee;

(*l*) in case any person has to the bankrupt's knowledge filed a false claim, disclose the fact immediately to the Official Assignee;

(*m*) disclose to the Official Assignee any matter in respect of which the bankrupt is or may become a defendant or respondent in proceedings (including criminal proceedings), to such extent as the Official Assignee may require;

(*n*) generally do all such acts and things in relation to the bankrupt's property and the distribution of the proceeds among the bankrupt's creditors as may be reasonably required by the Official Assignee or prescribed by the regulations or directed by the Court by any order on any application by the Official Assignee or by any of the bankrupt's creditors; and

(*o*) until the bankrupt has been discharged from bankruptcy, keep the Official Assignee advised at all times of his or her place of residence or address and such other contact details as may be required by the Official Assignee.

(2) Where a bankrupt has changed his or her residential address and has made a report of the change under section 8 of the National Registration Act (Cap. 201) —

(*a*) the bankrupt is deemed to have informed the Official Assignee of the change of his or her residential address in compliance with subsection (1)(*o*); and

(*b*) the new residential address as reported by the bankrupt under section 8 of the National Registration Act is, unless the bankrupt informs the Official Assignee in writing to the contrary, deemed to be the bankrupt's last known address for the purpose of subsection (3).

(3) Any notice or process given to or served upon the bankrupt at his or her last known address is deemed to have been duly given or served and is conclusive evidence of the fact of service.

Disqualification of bankrupt

400.—(1) In addition to any disqualification under any other written law, a bankrupt is disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement, except with the leave of the Court.

(2) Any disqualification to which a bankrupt is subject under this section ceases when —

(*a*) the bankruptcy order against the bankrupt is annulled or rescinded; or

(*b*) the bankrupt is discharged under Part 18.

(3) Any person who acts as a trustee or personal representative while that person is disqualified by virtue of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

Disabilities of bankrupt

401.—(1) Where a bankrupt has not obtained his or her discharge —

(*a*) unless the bankrupt has obtained the previous sanction of the Official Assignee, the bankrupt is incompetent to commence, continue or defend —

(i) any action other than —

(A) an action for damages in respect of any injury to the bankrupt's person; or

(B) a matrimonial proceeding; or

(ii) any appeal arising from any action referred to in sub-paragraph (i); and

(*b*) the bankrupt must not leave, or remain or reside outside, Singapore without the previous permission of the Official Assignee.

(2) Despite subsection (1)(*a*), the bankrupt must notify the Official Assignee of any proceedings mentioned in subsection (1)(*a*)(i)(A) or (B), or any appeal arising from any such proceedings, not later than 3 days before commencing, continuing or defending the proceedings or appeal, as the case may be.

(3) A bankrupt who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) In this section —

"action" and "proceedings" include arbitration;

"matrimonial proceeding" means —

(*a*) a proceeding under Part VIII, IX or X of the Women's Charter; or

(*b*) a proceeding mentioned in section 35(2)(*a*), (*b*), (*c*), (*d*) or (*e*) or 35A of the Administration of Muslim Law Act (Cap. 3).

PART 20

BANKRUPTCY OFFENCES

Interpretation of this Part

402. In this Part —

(*a*) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the Official Assignee include references to any property mentioned in section 329(1);

(*b*) "initial period" means the period between the making of the bankruptcy application by or against a debtor and the commencement of the debtor's bankruptcy;

(*c*) a reference to a number of months or years before the making of a bankruptcy application is to be read as a reference to that period ending with the making of the bankruptcy application; and

(*d*) "Official Assignee" includes a trustee in bankruptcy.

Powers of investigation

403.—(1) For the purpose of investigating any offence under Parts 3 and 13 to 21, the Official Assignee or any officer authorised by the Official Assignee (called in this section an authorised officer) may do all or any of the following:

(*a*) require, by notice in writing, any person who appears to be acquainted with the facts and circumstances relating to the offence to attend before the Official Assignee or authorised officer (as the case may be) on such date and at such time as may be specified in the notice;

(*b*) examine any person who appears to be acquainted with the facts and circumstances relating to the offence, and require that person to answer such questions relating to the offence as may be posed by the Official Assignee or authorised officer, as the case may be;

(*c*) require any person to furnish any information, or produce any book, document or copy of a book or document, which

may relate to the offence, that is in the possession of that person and, without payment, inspect, keep, copy, photograph or take extracts from any such book, document or copy.

(2) A statement made by any person examined under this section must —

(*a*) be reduced to writing;

(*b*) be read over to that person;

(*c*) if that person does not understand English, be interpreted in a language which that person understands; and

(*d*) after correction, if necessary, be signed by that person.

(3) Any person who, without reasonable excuse, does any of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,500 or to imprisonment for a term not exceeding one month or to both:

(*a*) fails to attend before the Official Assignee or an authorised officer as required by a notice under subsection (1)(*a*);

(*b*) fails to furnish any information, or produce any book, document or copy of a book or document, in that person's possession as required under subsection (1)(*c*).

(4) Any person who, without reasonable excuse, fails to answer any question posed to that person as required under subsection (1)(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $3,000 or to imprisonment for a term not exceeding 6 months or to both.

Defence of innocent intention

404.—(1) In the case of an offence under any provision of this Part, other than sections 406(*e*), 408, 411(2), 413, 414 and 416, a person shall not be guilty of the offence if the person proves that, at the time of the conduct constituting the offence, the person had no intent to defraud or to conceal the state of the person's affairs.

(2) An individual who is a bankrupt is not guilty of any offence under section 406(*a*), (*b*) or (*d*), 407(*a*), (*b*), (*c*), (*d*) or (*e*), 410(*a*) or

412(1)(*a*), (*b*) or (*c*) if the individual proves that, at the time of the conduct constituting the offence, the individual did not know or have any reason to believe that the individual had been made a bankrupt.

Non-disclosure

405.—(1) A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt does not to the best of the bankrupt's knowledge and belief disclose to the Official Assignee all the property comprised in the bankrupt's estate; or

(*b*) the bankrupt does not inform the Official Assignee of any disposal of any property which, but for the disposal, would be comprised in the bankrupt's estate, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1)(*b*) does not apply to any disposal of property in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or the bankrupt's family.

Concealment of property

406. A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt does not deliver up possession to the Official Assignee, or as the Official Assignee may direct, of such part of the property comprised in the bankrupt's estate as is in the possession or under the control of the bankrupt and which the bankrupt is required by law to deliver up;

(*b*) the bankrupt conceals any debt due to or from the bankrupt or conceals any property the value of which is at least $1,000 (or such higher amount as may be prescribed) and possession of which the bankrupt is required to deliver up to the Official Assignee;

(*c*) in the 12 months before the making of the bankruptcy application by or against the bankrupt, or in the initial period, the bankrupt did anything which would have been an offence under paragraph (*b*) if the bankruptcy order

against the bankrupt had been made before the bankrupt did it;

(*d*) the bankrupt removes, or in the initial period removed, any property the value of which is or was at least $1,000 (or such higher amount as may be prescribed) and possession of which the bankrupt is or would have been required to deliver up to the Official Assignee; or

(*e*) the bankrupt without reasonable excuse fails, on being required to do so by the Official Assignee or the court —

(i) to account for the loss of any substantial part of the bankrupt's property incurred in the 12 months before the making of the bankruptcy application by or against the bankrupt or in the initial period; or

(ii) to give a satisfactory explanation of the manner in which such a loss was incurred.

Concealment of books and papers; falsification, etc.

407. A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt does not deliver up possession to the Official Assignee, or as the Official Assignee may direct, of all books, papers and other records of which the bankrupt has possession or control and which relate to the bankrupt's estate or affairs;

(*b*) the bankrupt prevents, or in the initial period prevented, the production of any books, papers or records relating to the bankrupt's estate or affairs;

(*c*) the bankrupt conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to the bankrupt's estate or affairs;

(*d*) the bankrupt makes, or causes or permits the making of, any false entries in any book, document or record relating to the bankrupt's estate or affairs;

(*e*) the bankrupt disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to the bankrupt's estate or affairs; or

(*f*) in the 12 months before the making of the bankruptcy application by or against the bankrupt, or in the initial period, the bankrupt did anything which would have been an offence under paragraph (*c*), (*d*) or (*e*) if the bankruptcy order against the bankrupt had been made before the bankrupt did it.

False statements

408. A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt makes any false statement or any material omission in any statement under Part 3 or Parts 13 to 21 relating to the bankrupt's affairs;

(*b*) knowing or believing that a false debt has been proved by any person under the bankruptcy, the bankrupt fails to inform the Official Assignee as soon as practicable;

(*c*) the bankrupt attempts to account for any part of the bankrupt's property by fictitious losses or expenses;

(*d*) at any meeting of the bankrupt's creditors in the 12 months before the making of the bankruptcy application by or against the bankrupt or (whether or not at such a meeting) at any time in the initial period, the bankrupt did anything which would have been an offence under paragraph (*c*) if the bankruptcy order against the bankrupt had been made before the bankrupt did it; or

(*e*) the bankrupt is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of the bankrupt's creditors, or any of them, to an agreement with reference to the bankrupt's affairs or to his or her bankruptcy.

Fraudulent disposal of property

409.—(1) A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt makes or causes to be made, or has during the period of 5 years before the date of the bankruptcy order against the bankrupt, made or caused to be made, any gift or transfer of, or any charge on, the bankrupt's property, with the intention of defrauding the bankrupt's creditors, or of depriving the bankrupt's creditors of the property in the event that a bankruptcy order is made against the bankrupt; or

(*b*) the bankrupt conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of the bankrupt's property after, or within 2 months before, the date on which a judgment or an order for the payment of money has been obtained against the bankrupt, being a judgment or an order which was not satisfied before the commencement of his or her bankruptcy.

(2) In this section, the reference to making a transfer of or a charge on any property includes a reference to causing or conniving at the levying of any execution against that property.

Absconding with property

410. A bankrupt shall be guilty of an offence if —

(*a*) the bankrupt leaves, or attempts or makes preparations to leave, Singapore with any property the value of which is at least $1,000 (or such higher amount as may be prescribed) and possession of which the bankrupt is required to deliver up to the Official Assignee; or

(*b*) in the 12 months before the making of the bankruptcy application by or against the bankrupt, or in the initial period, the bankrupt did anything which would have been an offence under paragraph (*a*) if the bankruptcy order against the bankrupt had been made before the bankrupt did it.

Fraudulent dealing with property obtained on credit

411.—(1) A bankrupt shall be guilty of an offence if, in the 12 months before the making of the bankruptcy application by or against the bankrupt, or in the initial period, the bankrupt disposed of any property which the bankrupt had obtained on credit and which, at the time the bankrupt disposed of it, had not been paid for.

(2) A person shall be guilty of an offence if, in the 12 months before the making of the bankruptcy application by or against a bankrupt, or in the initial period, the person acquired or received property from the bankrupt knowing or believing —

(*a*) that the bankrupt owed money in respect of the property; and

(*b*) that the bankrupt did not intend, or was unlikely to be able, to pay the money so owed.

(3) A person shall not be guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(5) In this section, any reference to disposing of property is to be read as including a reference to pawning or pledging of such property, and any reference to acquiring or receiving property is to be read accordingly.

Obtaining credit, engaging in business, or standing as guarantor

412.—(1) An individual shall be guilty of an offence if, being an undischarged bankrupt —

(*a*) either alone or jointly with any other person, the individual obtains credit to the extent of at least $1,000 (or such higher amount as may be prescribed) from any person without

informing that person, at the time the credit is obtained, that the individual is an undischarged bankrupt;

(*b*) the individual engages in any trade or business under a name other than that under which the individual was adjudged bankrupt without disclosing to every person with whom the individual enters into any business transaction, at the time the transaction is entered into, the name under which the individual was adjudged bankrupt; or

(*c*) the individual provides a guarantee, indemnity or security to the extent of at least $1,000 (or such higher amount as may be prescribed) in respect of any amount borrowed or charged or any credit obtained by another person, without informing the lender or creditor, at the time the guarantee, indemnity or security is provided, that the individual is an undischarged bankrupt.

(2) In this section, any reference to a bankrupt obtaining credit is to be read as including a reference to any case in which —

(*a*) goods are bailed to the bankrupt under a hire-purchase agreement; and

(*b*) the bankrupt is paid in advance (whether in money or otherwise) for the supply of goods or services.

Failure to keep proper accounts of business

413.—(1) A bankrupt shall be guilty of an offence if, having been engaged in any business within 2 years before the making of the bankruptcy application by or against the bankrupt, the bankrupt has not —

(*a*) kept proper accounting records throughout that period and throughout any part of the initial period in which the bankrupt was so engaged; or

(*b*) preserved all the accounting records which the bankrupt has kept for the periods mentioned in paragraph (*a*).

(2) For the purposes of this section, a person is deemed not to have kept proper accounting records if the person has not kept such records

as are necessary to show or explain the person's transactions and financial position in the person's business, including —

(*a*) records containing entries from day to day, in sufficient detail, of all cash paid and received;

(*b*) where the business involved dealings in goods, statements of annual stock-takings; and

(*c*) except in the case of goods sold by way of retail trade, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

(3) A bankrupt shall not be guilty of an offence under subsection (1) —

(*a*) if the bankrupt's unsecured liabilities at the commencement of the bankruptcy did not exceed $15,000; or

(*b*) if the bankrupt proves that in the circumstances in which the bankrupt carried on business the omission was honest and excusable.

Gambling

414.—(1) A bankrupt shall be guilty of an offence if the bankrupt has —

(*a*) in the 12 months before the making of the bankruptcy application by or against the bankrupt, materially contributed to, or increased the extent of, the bankrupt's insolvency by gambling or by rash and hazardous speculations; or

(*b*) in the initial period, lost any part of the bankrupt's property by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this section whether any speculation was rash and hazardous, the financial position of the bankrupt at the time when the bankrupt entered into it is to be taken into consideration.

Bankrupt incurring debt without reasonable ground of expectation of being able to pay it

415. A bankrupt shall be guilty of an offence if —

(*a*) within 12 months before the making of a bankruptcy application by or against the bankrupt, or during the initial period, the bankrupt incurs any debt provable in bankruptcy; or

(*b*) having been engaged in carrying on any trade or business, the bankrupt continues to trade or carry on business by incurring any debt provable in bankruptcy within 12 months before the date of the making of a bankruptcy application by or against the bankrupt, or during the initial period, the bankrupt being insolvent on the date of incurring the debt,

without any reasonable ground of expectation of being able to pay the debt.

Making of false claims, etc.

416.—(1) Any creditor in any bankruptcy, composition or arrangement with creditors shall be guilty of an offence if the creditor makes any claim, proof, declaration or statement of account which is untrue in any material particular unless the creditor satisfies the court that the creditor had no intent to defraud.

(2) A creditor shall be guilty of an offence if the creditor obtains or receives any money, property or security from any person as an inducement for forbearing to oppose, or for consenting to, the discharge of a bankrupt.

(3) A person shall be guilty of an offence if the person, knowing that a bankruptcy order has been made against a debtor, removes, conceals, receives or otherwise deals with or disposes of any part of the property of the debtor, with intent to defeat the order.

(4) Fines imposed and levied under this section are deemed to be part of the property of the bankrupt and vest in the Official Assignee.

Penalty

417. A person guilty of any offence under this Part for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

Supplementary provisions

418.—(1) It is not a defence in proceedings for a bankruptcy-related offence that anything relied on, in whole or in part, as constituting that offence was done outside Singapore.

(2) In a charge for a bankruptcy-related offence, it is sufficient to set forth the substance of the offence charged in the words of the provision creating the offence, specifying the offence or as near to specifying the offence as circumstances admit, without alleging or setting forth any debt, demand, application or any proceedings in, or order, warrant or document of, the Court under Division 2 of Part 3 or Parts 13 to 21.

(3) Where a bankrupt is guilty of any bankruptcy-related offence, the bankrupt is not exempt from being proceeded against for the offence by reason that the bankrupt has obtained his or her discharge or that the bankruptcy order made against the bankrupt has been annulled or rescinded.

(4) In this section, "bankruptcy-related offence" means any offence under —

(*a*) Division 2 of Part 3; and

(*b*) Parts 13 to 21.

PART 21

BANKRUPTCY MISCELLANEOUS PROVISIONS

Administration in bankruptcy of estate of person dying insolvent

419.—(1) In this section, unless the context otherwise requires, "creditor" means one or more creditors qualified to make a bankruptcy application under Part 16.

(2) The Official Assignee or any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy application against the debtor had the debtor been alive, may make to the Court an application for an order for the administration of the estate of the deceased debtor according to Parts 16 to 21.

(3) Every application under this section is to be in the same form as a creditor's bankruptcy application under section 307, with such variations as the case may require, except that in the case of an application by the Official Assignee, it is not necessary to allege or prove that any debt is owing to the applicant.

(4) Upon the prescribed notice being given to the legal representative, if any, of the deceased debtor, the Court may, in the prescribed manner, upon proof of the applicant's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased debtor, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause being shown, dismiss the application with or without costs.

(5) An application for administration under this section must not be made to the Court after proceedings have been commenced for the administration of the deceased debtor's estate, except that the Court may, in that case, on the application of any creditor and on proof that the estate is insufficient to pay its debts in the prescribed manner, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences ensue as under an administration order made on the application of a creditor.

(6) An administration order under this section must not be made until the expiration of 2 months after the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor.

(7) Upon an administration order being made under this section, the property of the debtor vests in the Official Assignee as trustee of the property without any further conveyance, transfer or assignment, and the Official Assignee must forthwith proceed to realise and distribute the same in accordance with Parts 16 to 21.

(8) Sections 334, 335 and 336 so far as they relate to persons other than the debtor, and, with the modifications under this section, all the provisions of Part 17, so far as the same are applicable, apply to the case of an administration order under this section, and for the purposes of such application, unless the context otherwise requires, every reference to a bankrupt is to be read as a reference to the legal representative of the deceased debtor.

(9) Sections 361, 367 and 368 apply in the case of an administration order under this section as if the administration order were a bankruptcy order.

(10) In the administration of the property of the deceased debtor under an administration order, the Official Assignee must have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by the legal representative in and about the debtor's estate, and such claims are deemed to be preferential debts under the administration order and are payable in full out of the debtor's estate in priority to all other debts.

(11) If on the administration of a deceased debtor's estate any surplus remains in the hands of the Official Assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by Parts 16 to 21 in the case of a bankruptcy, the surplus is, subject to section 391(2), to be paid over to the legal representative of the deceased debtor's estate or dealt with in such other manner as is prescribed.

(12) Upon notice being given to the legal representative of a deceased debtor of the making by a creditor of an application under this section, and in the event of an administration order being made on the application, no payment or transfer of property made by the legal representative after the giving of the notice operates as a discharge to the legal representative as between the legal representative and the Official Assignee.

(13) Subject to this section, nothing in this section invalidates any payment made or act or thing done in good faith by the legal representative before the date of the administration order.

Arbitration agreements to which bankrupt is party

420.—(1) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his or her bankruptcy.

(2) If the Official Assignee adopts the contract, the arbitration agreement is enforceable by or against the Official Assignee in relation to matters arising from or connected with the contract.

(3) If the Official Assignee does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings —

(*a*) the Official Assignee; or

(*b*) any other party to the agreement,

may apply to the Court which may, if the Court thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

Costs

421.—(1) No payment may, without the approval of the Official Assignee, be allowed in the accounts of any trustee in bankruptcy or of any special manager in respect of the performance by any other person of the ordinary duties which are required by Parts 3 and 13 to 22 or the regulations to be performed by the trustee in bankruptcy or special manager, as the case may be.

(2) Unless agreed to by the Official Assignee, all bills and charges of any solicitor, manager, accountant, auctioneer, broker and other person (each called in this section a billing person) must be taxed by the Court.

(3) Every billing person must, on request by the Official Assignee, which request the Official Assignee must make a sufficient time before declaring a dividend, deliver the billing person's bill of costs or charges for taxation by the Court.

(4) If the billing person fails to deliver the bill of costs or charges for taxation by the Court within 7 days after receipt of the request mentioned in subsection (3), or such further time as the Court on

application grants, the Official Assignee must declare and distribute the dividend without regard to any claim by the billing person, and after such declaration and distribution, any such claim is forfeited as against the Official Assignee personally and as against the estate.

Actions by Official Assignee and bankrupt's partners

422.—(1) Where a partner in a firm is adjudged bankrupt, the Court may authorise the Official Assignee to commence and prosecute any action or other legal proceeding in the names of the Official Assignee and of the bankrupt's partner.

(2) Any release by the bankrupt's partner of the debt or demand to which the action or proceeding relates is void.

(3) Notice of the application for authority to commence the action or proceeding must be given to the bankrupt's partner and the partner may show cause against it, and on the partner's application the Court may, if the Court thinks fit, direct that the partner is to receive the partner's proper share of the proceeds of the action or proceeding, and if the partner does not claim any benefit from the proceeds of the action or proceeding, the partner is to be indemnified against costs in respect of the action or proceeding as the Court directs.

Action in aid of courts of Malaysia and designated countries

423.—(1) The Court and the officers of the Court must, in all matters of bankruptcy and insolvency, act in aid of and be auxiliary to the courts of Malaysia or any designated country having jurisdiction in bankruptcy and insolvency so long as the law of Malaysia or the designated country requires its courts to act in aid of and be auxiliary to the courts of Singapore.

(2) An order of any such court of Malaysia or any designated country, seeking aid with a request to the Court, is deemed sufficient to enable the Court to exercise in respect of the matters directed by the order such jurisdiction as either the court which made the request or the Court could exercise in respect of similar matters within their several jurisdictions.

(3) In this section, "designated country" means any country designated for the purposes of this section by the Minister by notification in the *Gazette*.

Reciprocal recognition of Official Assignees

424.—(1) The Minister may, by notification in the *Gazette*, declare that the Government of Singapore has entered into an agreement with the government of Malaysia for the recognition by each government of the Official Assignees in bankruptcy appointed by the other government.

(2) From the date of that notification, where any person has been adjudged a bankrupt by a court in Malaysia, such property of the bankrupt situate in Singapore as would, if the bankrupt had been adjudged bankrupt in Singapore, vest in the Official Assignee of Singapore, vests in the Official Assignee appointed by the government of Malaysia, and all courts in Singapore must recognise the title of such Official Assignee to such property.

(3) Subsection (2) does not apply where a bankruptcy application has been made against the bankrupt in Singapore until the application has been dismissed or withdrawn or the bankruptcy order has been rescinded or annulled.

(4) The production of an order of adjudication purporting to be certified, under the seal of the court in Malaysia making the order, by the registrar of that court, or of a copy of the official *Gazette* of Malaysia containing a notice of an order adjudging a person a bankrupt is conclusive proof in all courts in Singapore of the order having been duly made and of its date.

(5) The Official Assignee of Malaysia may sue and be sued in any court in Singapore by the official name of "the Official Assignee of the Property of (name of bankrupt), a Bankrupt under the Law of Malaysia".

Evidence of proceedings at meetings of creditors

425.—(1) A minute of proceedings at a meeting of creditors under Parts 3 and 13 to 21, signed at the same or the next ensuing meeting by a person describing himself or herself as or appearing to be

chairperson of the meeting at which the minute is signed, is to be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings of which a minute has been signed is deemed to have been duly convened and held, and all resolutions passed or proceedings had to have been duly passed or had at the meeting.

Evidence of proceedings in bankruptcy

426. Any —

(*a*) application or copy of an application in bankruptcy;

(*b*) order or certificate or copy of an order or certificate made by the Court in bankruptcy; or

(*c*) instrument, affidavit or document or copy of an instrument, an affidavit or a document made or used in the course of any bankruptcy proceedings or other proceedings under Parts 3 and 13 to 22,

is if it appears to be sealed with the seal of the Court or purports to be signed by any judge of the Court, or is certified as a true copy by the Registrar, receivable in evidence in all legal proceedings.

Swearing of affidavits

427. Subject to the Rules, any affidavit may be used in the Court if it is sworn —

(*a*) in Singapore, before any person authorised to administer oaths or any Magistrate;

(*b*) in Malaysia or other Commonwealth country, before a judge, magistrate, justice of the peace or any person authorised to administer oaths under any written law for the time being in force in Malaysia or that Commonwealth country; and

(*c*) in any other place, before a magistrate or justice of the peace or other person qualified to administer oaths in that place, certified as such by a consul or person performing

consular functions on behalf of the government or by a notary public.

Death of witness, etc.

428. In the case of the death of the debtor or bankrupt, or of the spouse of the debtor or bankrupt, or of a witness whose evidence has been received by the Court in any proceedings under Parts 3 and 13 to 22, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy of the deposition purporting to be so sealed, is admissible as evidence of the matters deposed to in the deposition.

Service of summons, notice, etc.

429.—(1) Every summons, notice or document required or authorised to be served on any person under any provision of Parts 3 and 13 to 21 and, despite anything to the contrary in the Criminal Procedure Code, every summons issued by a court for the attendance of any person accused of any offence under Parts 3 and 13 to 21, may be served on the person —

(*a*) by delivering it to that person;

(*b*) by delivering it to any adult person residing at that person's usual or last known place of residence or employed at that person's last known place of business;

(*c*) by leaving it at that person's usual or last known place of residence or business; or

(*d*) by forwarding it by registered post in a cover addressed to that person at that person's usual or last known place of residence or business or at any address furnished by that person.

(2) In proving service by registered post, it is sufficient to prove that the registered cover containing the summons, notice or document was duly addressed and posted.

Formal defect not to invalidate proceedings or acts

430.—(1) No proceedings in bankruptcy are invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceedings is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

(2) The acts of a person as a trustee or as a special manager, and the acts of the creditors' committee appointed for any bankruptcy, are valid despite any defect in the appointment, election or qualifications of the trustee, manager or any member of the committee, as the case may be.

Acts of corporations, firms and lunatics

431. For all or any of the purposes of Parts 3 and 13 to 22 —

(*a*) a corporation may act by any of its officers authorised in that behalf under the seal of the corporation;

(*b*) a firm may act by any of its members; and

(*c*) a person who lacks capacity may act by —

(i) a donee of a lasting power of attorney granted by the person with powers in relation to the person for the purposes of Parts 3 and 13 to 22; or

(ii) a deputy appointed or deemed to be appointed for the person by the court under the Mental Capacity Act with powers in relation to the person for the purposes of Parts 3 and 13 to 22.

Exclusion of liability relating to computerised information service

432. Where the Official Assignee provides a service to the public by which computerised information of prescribed particulars of a bankrupt is supplied to the public on payment of a prescribed fee, neither the Government nor any of its employees involved in the supply of such information is liable for any loss or damage suffered by any member of the public or the bankrupt by reason of any error or omission of any nature in the information, regardless of how the error

or omission is caused, if the provision of the information containing the error or omission is made in good faith and in the ordinary course of the discharge of the duties of the employee.

List of undischarged bankrupts, etc., to be kept

433.—(1) The Official Assignee must maintain, in such form or manner as the Official Assignee thinks fit —

(*a*) a list of undischarged bankrupts;

(*b*) a list of discharged bankrupts;

(*c*) a record of every bankruptcy order;

(*d*) a record of every order rescinding a bankruptcy order;

(*e*) a record of every order, and every certificate of the Official Assignee, discharging a bankruptcy order; and

(*f*) a record of every order, and every certificate of the Official Assignee, annulling a bankruptcy order.

(2) Subject to subsections (3) and (4), the Official Assignee may allow any person, on payment of the prescribed fee, to inspect or otherwise have access to the whole or any part of any list or record mentioned in subsection (1)(*a*) to (*e*) as the Official Assignee may determine.

(3) Subject to section 393(3), where a bankruptcy order has been annulled, no person may inspect or have access to any part of any record maintained by the Official Assignee which relates to the bankruptcy order or the annulment of the bankruptcy order.

(4) Where an individual's target contribution was paid in full before the individual's discharge from bankruptcy, and 5 years have lapsed after the date of discharge, no person (except the individual) may inspect or otherwise have access to —

(*a*) the part of the list mentioned in subsection (1)(*b*) relating to the bankruptcy which the individual was discharged from; and

(*b*) the part of any record mentioned in subsection (1)(*c*) or (*e*) relating to the bankruptcy which the individual was discharged from.

(5) Where the question arises as to whether a person is an undischarged bankrupt, a certificate from the Official Assignee stating whether or not that person is an undischarged bankrupt is prima facie evidence of the facts stated in the certificate.

Unclaimed and undistributed moneys

434.—(1) Where a trustee in bankruptcy or nominee is in possession of or has under the control of the trustee or nominee —

(*a*) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or

(*b*) after making final distribution, any unclaimed or undistributed moneys arising from the property of a bankrupt,

the trustee or nominee (as the case may be) must forthwith pay those moneys to the Official Assignee to be placed to the credit of the Bankruptcy Estates Account.

(2) Upon payment under subsection (1), the Official Assignee must issue to the trustee in bankruptcy or nominee the prescribed certificate of receipt for the moneys so paid and that certificate is an effectual discharge to the trustee or nominee in respect of the payment.

(3) The Official Assignee must from time to time pay out of the Bankruptcy Estates Account and into the Insolvency Assistance Fund maintained under section 436 so much of the sums standing to the credit of the Bankruptcy Estates Account as represents —

(*a*) dividends or balances in the Bankruptcy Estates Account which do not exceed $50;

(*b*) dividends which were declared but have not been claimed for a period of 6 years; or

(*c*) balances in the Bankruptcy Estates Account which have not been claimed for a period of 6 years after the date that —

(i) the bankruptcy order has been annulled by the Court;

(ii) the bankrupt has been discharged from bankruptcy by the Court;

(iii) the bankrupt has been discharged from bankruptcy by a certificate issued by the Official Assignee;

(iv) the bankruptcy application made against a debtor has been withdrawn by the applicant or dismissed by the Court; or

(v) the moneys were paid into the Bankruptcy Estates Account under subsection (1).

(4) The Official Assignee must from time to time pay out of the Debt Repayment Schemes Account and into the Debt Repayment Scheme Assistance Fund maintained under section 435 so much of the sums standing to the credit of the Debt Repayment Schemes Account as represents —

(*a*) balances in the Debt Repayment Schemes Account which do not exceed $50; or

(*b*) balances in the Debt Repayment Schemes Account in respect of a debt repayment scheme which have remained unclaimed for a period of 6 years after the date on which the debt repayment scheme has ceased under section 298(1).

Debt Repayment Scheme Assistance Fund

435.—(1) The Official Assignee must maintain and administer a fund to be known as the Debt Repayment Scheme Assistance Fund (called in this section the Fund) in accordance with such regulations as may be prescribed.

(2) The following are to be paid into the Fund:

(*a*) all moneys mentioned in section 434(4);

(*b*) all costs and fees recovered by the Official Assignee in any proceedings under Part 15 in which moneys from the Fund were applied.

(3) The Fund may be applied by the Official Assignee for such purposes as may be prescribed.

(4) The Minister may from time to time pay such sums of moneys out of the Fund and into the Consolidated Fund as the Minister may determine.

(5) If any claimant makes any demand against the Official Assignee for any amount of unclaimed moneys paid into the Fund under subsection (2)(*a*), the Minister may direct that payment of that amount, free of interest, be made to the claimant out of the Consolidated Fund.

Insolvency Assistance Fund

436.—(1) The Official Assignee must maintain and administer a fund to be known as the Insolvency Assistance Fund (called in this section the Fund) in accordance with such regulations as may be prescribed.

(2) The following are to be paid into the Fund:

(*a*) all unclaimed moneys mentioned in section 434(3);

(*b*) all costs and fees recovered by the Official Assignee in any proceedings taken under Parts 3 and 13 to 22 in which moneys from the Fund were applied.

(3) Subject to subsections (4) and (6), the Fund may be applied by the Official Assignee for all or any of the following purposes:

(*a*) for the remuneration of special managers appointed under section 379;

(*b*) for the payment of all costs, fees and allowances to solicitors and other persons in proceedings on behalf of a bankrupt's estate or to recover assets of the estate;

(*c*) for the payment of such costs and fees in the administration of a bankrupt's estate as the Official Assignee may determine;

(*d*) for such other purposes as may be prescribed.

(4) If any claimant makes any demand against the Official Assignee for any amount of unclaimed moneys paid into the Fund under subsection (2)(*a*), the Minister may direct that payment of that amount, free of interest, be made to the claimant out of the Consolidated Fund.

(5) No moneys from the Fund may be applied for any proceedings where, in the opinion of the Official Assignee, there is no reasonable ground for taking, defending, continuing or being a party to the proceedings or where there are sufficient moneys for such purpose in the bankrupt's estate.

(6) The Minister may from time to time pay such sums of moneys out of the Fund and into the Consolidated Fund as the Minister may determine.

Composition of offences

437.—(1) The Official Assignee may, in the Official Assignee's discretion, compound any offence under Division 2 of Part 3 and Parts 13 to 21 which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

(*a*) one half of the amount of the maximum fine that is prescribed for the offence;

(*b*) $5,000.

(2) On payment of such sum of money under subsection (1), no further proceedings are to be taken against that person in respect of the offence.

(3) All sums collected under this section must be paid into the Consolidated Fund.

PART 22

PROVISIONS AGAINST DEBT AVOIDANCE AND LIMITATION ON CERTAIN CONTRACTUAL RIGHTS

Transactions defrauding creditors

438.—(1) This section relates to any transaction entered into by a person (called in this section and section 439 the debtor) with another person at an undervalue.

(2) For the purposes of subsection (1), a debtor enters into a transaction with another person at an undervalue if —

(*a*) the debtor makes a gift to the other person or the debtor otherwise enters into a transaction with the other person on terms that provide for the debtor to receive no consideration;

(*b*) the debtor enters into a transaction with the other person in consideration of marriage; or

(*c*) the debtor enters into a transaction with the other person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.

(3) Where a debtor enters into a transaction at an undervalue, the Court may, if satisfied under subsection (4), make such order as the Court thinks fit for —

(*a*) restoring the position to what it would have been if the transaction had not been entered into; and

(*b*) protecting the interests of any person who is, or is capable of being, prejudiced by the transaction (called in this section and section 439 a victim).

(4) An order under subsection (3) may only be made if the Court is satisfied that a transaction at an undervalue was entered into by a debtor for the purpose —

(*a*) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the debtor; or

(*b*) of otherwise prejudicing the interests of any person in relation to a claim which the person is making or may make against the debtor.

(5) An application for an order under subsection (3) must not be made in relation to a transaction except —

(*a*) in a case where the debtor has been adjudged bankrupt under Part 16, by the Official Assignee, the trustee in bankruptcy or (with the leave of the Court) a victim of the transaction;

(*b*) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part 14, by the nominee of the voluntary arrangement or by any person who (whether or not so bound) is such a victim;

(*c*) in a case where the debtor is a company that is being wound up under Part 8 or is in judicial management under Part 7, by —

(i) the Official Receiver;

(ii) the liquidator or judicial manager (whichever is applicable); or

(iii) a victim of the transaction; and

(*d*) in any other case, by a victim of the transaction.

(6) An application made under subsection (5) is deemed to be made on behalf of every victim of the transaction.

Provisions which may be made by order under section 438

439.—(1) Without limiting section 438(3) but subject to subsection (2), an order made under that section with respect to a transaction may —

(*a*) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is deemed to be made;

(*b*) require any property to be so vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is deemed to be made, if the property represents, in any person's hands, the application either of the proceeds of sale of property transferred as part of the transaction or of money so transferred;

(*c*) release or discharge (in whole or in part) any security given by the debtor;

(*d*) require any person to pay to any other person in respect of benefits received from the debtor such sums as the Court may direct;

(*e*) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the Court thinks appropriate; and

(*f*) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under section 438 may affect the property of, or impose any obligation, on any person whether or not that person is the person with whom the debtor entered into the transaction, but must not —

(*a*) prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and

(*b*) require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless the person who received the benefit was a party to the transaction.

(3) For the purposes of this section, the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 438 may be made in respect of the transaction.

(4) In this section, "security" has the meaning given by section 61(1).

(5) Any reference in this section to the person or property of a debtor or bankrupt is, in relation to a debtor which is a firm or to a firm against which a bankruptcy order has been made (as the case may be), to be read as a reference to the person or property of each partner of the firm.

Certain contractual rights limited

440.—(1) No person may, at any time after the commencement, and before the conclusion, of any proceedings by a company —

(*a*) terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement (including a security agreement) with the company; or

(*b*) terminate or modify any right or obligation under any agreement (including a security agreement) with the company,

by reason only that the proceedings are commenced or that the company is insolvent.

(2) Nothing in this section is to be construed as —

(*a*) prohibiting a person from requiring payments to be made in cash for goods, services, use of leased property or other valuable consideration provided after the commencement of the proceedings; or

(*b*) requiring the further advance of money or credit.

(3) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect.

(4) On an application by a party to an agreement, the Court may declare that this section does not apply, or applies only to the extent declared by the Court, if the applicant satisfies the Court that the

operation of this section would likely cause the applicant significant financial hardship.

(5) Subsection (1) does not apply in respect of any legal right under —

(*a*) any eligible financial contract as may be prescribed;

(*b*) any contract that is a licence, permit or approval issued by the Government or a statutory body;

(*c*) any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed;

(*d*) any commercial charter of a ship;

(*e*) any agreement within the meaning of the Convention as defined in section 2(1) of the International Interests in Aircraft Equipment Act (Cap. 144B); or

(*f*) any agreement that is the subject of a treaty to which Singapore is party, as may be prescribed.

(6) In this section —

"company" means any corporation liable to be wound up under this Act, but excludes such company or class of companies as the Minister may by order in the *Gazette* prescribe;

"essential service" has the meaning given by section 2(1) of the Cybersecurity Act 2018 (Act 9 of 2018);

"national interest" includes national defence, national security, public security and the maintenance of any essential service;

"proceedings" means any proceedings arising from —

(*a*) any application under section 210(1) of the Companies Act for the approval of the Court in relation to any compromise or arrangement between a company and its creditors or any class of those creditors;

(*b*) any application under section 71 for the approval of the Court in relation to any compromise or arrangement;

(*c*) any application for an order under section 64 or 65;

(*d*) any application for a judicial management order under section 91; or

(*e*) the lodgment of a written notice of the appointment of an interim judicial manager under section 94(5)(*a*).

PART 23

MISCELLANEOUS AND GENERAL PROVISIONS

Application of sections 442, 443 and 444, etc.

441.—(1) Sections 442, 443 and 444 do not apply to —

(*a*) the filing, lodgment or submission of a notice or other document with or to the Registrar of Companies or the Official Receiver;

(*b*) the filing of any notice or other document with the Court;

(*c*) the service of a written demand mentioned in section 125(2)(*a*); or

(*d*) the service of a statutory demand mentioned in section 312.

(2) In this section and sections 442, 443 and 444, "document" has the meaning given by section 61(1).

(3) In sections 443, 444, 445 and 446, "relevant officeholder" means —

(*a*) in relation to a company —

(i) the Official Receiver, when acting as liquidator or provisional liquidator; or

(ii) a liquidator, provisional liquidator, judicial manager, or receiver or manager; and

(*b*) in relation to an individual —

(i) the Official Assignee;

(ii) a person appointed as a trustee in bankruptcy; or

(iii) a nominee under a voluntary arrangement approved under Part 14.

Electronic delivery in insolvency proceedings — general

442.—(1) Unless in any particular case some other form of delivery is required by this Act, the regulations, the rules or an order of the Court and subject to subsections (3), (4) and (5), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has —

(*a*) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and

(*b*) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where —

(*a*) the sender can produce a copy of the electronic message which —

(i) contained the notice or other document, or to which the notice or other document was attached; and

(ii) shows the time and date the message was sent; and

(*b*) that electronic message contains the address provided under subsection (1)(*b*).

(3) A message is deemed to have been delivered to the recipient at 9 a.m. on the next business day after the message was sent if the message was sent electronically —

(*a*) after 6 p.m. but on or before 11.59 p.m. on a business day; or

(*b*) on a day other than a business day.

(4) A message sent electronically before 9 a.m. on a business day is deemed to have been delivered to the recipient at 9 a.m. on that business day.

Electronic delivery by relevant officeholders

443.—(1) Where a relevant officeholder gives, sends or delivers a notice or other document to any person by electronic means under section 442, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and that specifies an electronic address to which a request for a hard copy may be addressed.

(2) Where a hard copy of the notice or other document is requested, the relevant officeholder must send a hard copy of the notice or document within 7 days after the relevant officeholder receives the request.

(3) A relevant officeholder must not, unless provided otherwise by regulations, require a person making a request under subsection (2) to pay a fee for the supply of the document.

Use of Internet websites by relevant officeholder

444.—(1) A relevant officeholder required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice —

(*a*) stating that the document is available for viewing and downloading on an Internet website;

(*b*) specifying the address of that Internet website together with any password necessary to view and download the document from that site; and

(*c*) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and that specifies an electronic address to which a request for hard copy may be sent.

(2) Where a notice is sent under subsection (1), the document to which the notice relates must —

(*a*) be available on the Internet website for a period of not less than 3 months after the date on which the notice is sent; and

(*b*) must be in such a format as to enable the document to be downloaded from the Internet website within a reasonable time of an electronic request being made for the document to be downloaded.

(3) Where a hard copy of the document is requested, it must be sent within 7 days of the receipt of the request by the relevant officeholder.

(4) A relevant officeholder must not, unless provided otherwise by regulations, require a person making a request under subsection (3) to pay a fee for the supply of the document.

(5) Where a document is given, delivered or sent to a person by means of an Internet website in accordance with this section, it is deemed to have been delivered at the later of the following times:

(*a*) the time when the document was first made available on the Internet website;

(*b*) the time when the notice under subsection (1) was delivered to that person.

Remote attendance at meetings

445.—(1) Subject to subsection (2), this section applies to —

(*a*) any meeting of the creditors of an individual or a company summoned under this Act or the regulations;

(*b*) any meeting of the members or contributories of a company summoned by the relevant officeholder under this Act or the regulations, other than a meeting of the members of a company in a members' voluntary winding up;

(*c*) any meeting of the committee of inspection of a company called by the liquidator under section 151(2); or

(*d*) any meeting of the creditors' committee convened by the Official Assignee under section 331(2).

(2) Where the person summoning a meeting (called in this section the convener) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner mentioned in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section —

(*a*) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(*b*) a person is able to exercise the right to vote at a meeting when —

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner mentioned in subsection (2) must make appropriate arrangements to —

(*a*) enable those attending the meeting to exercise their rights to speak or vote; and

(*b*) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener —

(*a*) a meeting which is to be conducted and held in the manner mentioned in subsection (2) will be attended by persons who will not be present together at the same place; and

(*b*) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the regulations to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements mentioned in subsection (5) and in forming the opinion mentioned in subsection (6)(*b*), the convener must have regard to the legitimate interests of the members or contributories of the company, creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If —

(*a*) the notice of a meeting which is to be conducted and held in the manner mentioned in subsection (2) does not specify a place for the meeting;

(*b*) the convener is requested in accordance with the regulations to specify a place for the meeting; and

(*c*) that request is made —

(i) in the case of a meeting of creditors or contributories, by at least 10% in value of the creditors or contributories; or

(ii) in the case of a meeting of members of the company, by members representing at least 10% of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it is the duty of the convener to specify a place for the meeting.

(9) Where a person attends, in accordance with subsection (3), a meeting conducted and held in the manner mentioned in subsection (2), that person is deemed for the purposes of this Act to be present in person at the meeting.

(10) In this section, "members' voluntary winding up" has the meaning given by section 61(1).

Resolutions by correspondence

446.—(1) A relevant officeholder may seek to obtain the passing of a resolution by creditors or contributories without holding a meeting

by giving notice of the resolution to every creditor or contributory who is entitled to be notified of a meeting at which the resolution could be passed.

(2) In order to be counted, a vote must —

(*a*) be received by the relevant officeholder by 1 p.m. on the closing date specified in the notice;

(*b*) be in writing or in a permitted alternative form; and

(*c*) in the case of a vote cast by a creditor, be accompanied by a proof of debt unless it has already been lodged with the relevant officeholder.

(3) If any vote cast by a creditor is received without a proof of debt, or the relevant officeholder decides that the creditor or contributory is not entitled to vote under the Act or the regulations, then that creditor's or contributory's vote must be disregarded.

(4) The closing date may be set at the discretion of the relevant officeholder, but in any event it must not be set less than 14 days after the giving of notice mentioned in subsection (1).

(5) For the resolution to be passed, the relevant officeholder must receive at least one valid vote by the closing date specified in the notice.

(6) If no valid vote is received by the closing date specified, the relevant officeholder must call a meeting of creditors or contributories at which the resolution could be passed.

(7) Creditors whose debts amount to at least 10% of the total debts of the company may, within 7 days after the giving of notice provided for in subsection (1), require the relevant officeholder to summon a meeting of creditors to consider the resolution.

(8) Contributories representing at least 10% of the total value of all contributories may, within 7 days after the giving of notice provided for in subsection (1), require the relevant officeholder to summon a meeting of contributories to consider the resolution.

(9) A reference in this Act or the regulations to a resolution passed at a creditors' or contributories' meeting includes a reference to a resolution passed under this section.

(10) For the purposes of subsection (2), a vote is "in a permitted alternative form" if, and only if, it is sent or otherwise supplied in a form other than writing that —

(*a*) is currently agreed between the relevant officeholder and the creditor or contributory as a form in which the vote may be sent or otherwise supplied to the relevant officeholder; and

(*b*) is such that votes sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

Amendment of Schedules

447. The Minister may, by order in the *Gazette*, add to, vary or amend the Second or Third Schedule.

Rules of Court

448.—(1) The Rules Committee appointed under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court —

(*a*) to regulate and prescribe —

(i) proceedings and the practice and procedure of the Court under this Act;

(ii) proceedings and the practice and procedure of the Court of Appeal on an appeal from the Court; and

(iii) any matters incidental to or relating to any such proceedings, practice and procedure;

(*b*) to provide for fees and costs for the proceedings mentioned in paragraph (*a*);

(*c*) to prescribe rules as to meetings ordered by the Court;

(*d*) to prescribe such matters as are required by this Act to be prescribed by Rules of Court made under this section; and

(*e*) to provide for matters generally with respect to corporate insolvency proceedings or bankruptcy proceedings under this Act.

(2) Without limiting subsection (1), the Rules of Court made under this section may provide for the following matters:

(*a*) the manner in which, and the time within which, any application is to be made to the Court or the Court of Appeal under this Act;

(*b*) the part of the business which may be transacted by a Judge in court or in chambers, and the part of the jurisdiction and powers which may be exercised by a Judge in court or in chambers, which may be transacted or exercised by the Registrar (including provisions for appeals against decisions of the Registrar);

(*c*) the procedure to be followed on appeals from the Court to the Court of Appeal;

(*d*) the scales of allowances, costs and fees to be taken or paid to any party or witness in any proceedings in the Court or the Court of Appeal, and any matters relating to the costs of proceedings in such courts;

(*e*) any rules enabling proceedings —

(i) to be commenced in the Court against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant of probate or letters of administration has been made;

(ii) purporting to have been commenced in the Court by or against a person to be treated, if the person was dead at their commencement, as having been commenced by or against (as the case may be) the person's estate, whether or not a grant of probate or letters of administration was made before their commencement; and

(iii) commenced or treated as commenced in the Court by or against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) by or against (as the case may be) a person appointed to represent the estate or,

if a grant of probate or letters of administration is or has been made, by or against the personal representatives;

(*f*) the means by which particular facts may be proved, and the mode in which evidence of those facts may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;

(*g*) the joinder of parties and for prescribing in what cases persons absent, but having an interest in a cause or matter, are to be bound by any order made in the cause or matter, and the causes or matters in which orders may be made for the representation of absent persons by one or more parties to a cause or matter;

(*h*) the rate of interest payable on all debts, including judgment debts, or on the sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the Court, except that the rate of interest must not exceed 8% per annum in any case, unless it has been otherwise agreed between the parties;

(*i*) the cases in which money due under a judgment or order is to be paid into court;

(*j*) the modes in which a writ of seizure and sale may be executed, the manner in which seizure may be made of any property seizable under the writ of seizure and sale, the mode of sale by the Sheriff or any other officer of the Court of any property so seized, and the manner in which the right and title of purchasers of the property at any sale by any officer of the Court may be secured to the purchasers;

(*k*) the discovery of a judgment debtor's property in aid of the execution of any judgment or order;

(*l*) the taking of evidence before an examiner on commission or by letters of request, and the circumstances in which evidence so taken may be read on the trial of an action;

(*m*) the cases in which and the conditions on which a court may act upon the certificate of accountants, actuaries or other scientific persons;

(*n*) the duties of the Accountant appointed under section 66(1) of the Supreme Court of Judicature Act in respect of funds or property in the custody of the Court, and in particular the mode of transfer of securities into the name of the Accountant, the method of investment of any such funds, the rate of interest to be charged on those funds, and the manner in which unclaimed funds may be dealt with.

(3) All Rules of Court made under this section must be presented to Parliament as soon as possible after publication in the *Gazette*.

Regulations

449.—(1) The Minister may make regulations for the purposes of carrying into effect the objects of this Act.

(2) Without limiting subsection (1), the Minister may make regulations with respect to —

(*a*) the duties and functions of the Official Assignee and the Official Receiver and other persons appointed to assist with the administration of this Act;

(*b*) all matters connected with or arising out of a compromise or an arrangement between a company and its creditors or any class of those creditors;

(*c*) the releasing of a debtor from any obligation under Part 15;

(*d*) the circumstances to be taken into account in the approval or modification of a debt repayment plan;

(*e*) the powers and procedures of the Appeal Panel under section 304;

(*f*) the procedures of an Appeal Panel Committee under section 304;

(*g*) the information and documents to be furnished by a debtor to the Official Assignee relating to the debtor's property, debts and other financial affairs;

(*h*) the convening and conduct of, and the participation of a debtor and the debtor's creditors in and their respective obligations at, meetings held under Parts 14 and 15;

(*i*) the inspection of documents submitted to the Official Assignee under Part 15;

(*j*) the circumstances in which a creditor may claim interest in the creditor's proof of debt despite the absence of any previous agreement or reservation as to interest, and the rate of interest that may be claimed in such circumstances;

(*k*) meetings of creditors, the functions, membership and proceedings of a creditors' committee in a bankruptcy;

(*l*) the proof of debts, the manner and conditions of proving a debt and the manner and expenses of establishing the value of any debt or security;

(*m*) the scale of appropriation of salary under section 372;

(*n*) all matters connected with or arising out of the judicial management of a company by a judicial manager, including the appointment of the judicial manager;

(*o*) the grant and renewal of licences of licensed insolvency practitioners;

(*p*) the requirements applicable to licensed insolvency practitioners;

(*q*) the electronic submission of documents and forms to the Official Assignee or the Official Receiver;

(*r*) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;

(*s*) prescribing forms for the purposes of this Act;

(*t*) prescribing any fees payable under this Act;

(*u*) prescribing the penalties payable for the late lodgment of any document;

(*v*) prescribing the manner in which prescribed fees and penalties are to be paid;

(*w*) the waiver, refund or remission, whether wholly or in part, of any fee or penalty chargeable under this Act;

(*x*) providing for the service of documents, and the giving of notices, required or allowed under this Act, except documents and notices for proceedings in a court;

(*y*) prescribing offences which may be compounded; and

(*z*) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

(3) The powers conferred by this section do not extend to any matter for which Rules of Court may be made under section 448.

Repeal

450. The provisions of the Bankruptcy Act as specified by the Minister, by notification in the *Gazette*, are repealed on such date or dates as the Minister may by that notification appoint.

PART 24

CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

Division 1 — Companies Act

Amendment of Companies Act

451.—(1) Section 3 of the Companies Act (Cap. 50, 2006 Ed.) is amended by deleting subsection (4).

(2) Section 4 of the Companies Act is amended —

(*a*) by deleting the definitions of “approved liquidator”, “creditors’ voluntary winding up”, “members’ voluntary winding up” and “resolution for voluntary winding up” in subsection (1);

(*b*) by inserting, immediately after the definition of "chief executive officer" in subsection (1), the following definition:

" "commencement of winding up" —

(*a*) in a winding up by the Court, has the meaning given by section 126 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) in a voluntary winding up, has the meaning given by section 161(6) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*c*) by deleting paragraph (*g*) of the definition of "officer" in subsection (1) and substituting the following paragraph:

"(*g*) a judicial manager appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;";

(*d*) by deleting the definition of "Official Receiver" in subsection (1) and substituting the following definitions:

" "Official Assignee" means the Official Assignee appointed under section 16(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an Assistant Official Assignee;

"Official Receiver" means the Official Receiver appointed under section 17(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Receiver, a Senior Assistant Official Receiver and an Assistant Official Receiver;";

(*e*) by deleting the words ", section 254(1)(*f*), 286, 287 or" in subsection (8) and substituting the words "or section"; and

(*f*) by deleting "9(6)," in subsection (12).

(3) Sections 9 and 11 of the Companies Act are repealed.

(4) Section 13(1) of the Companies Act is amended —

(*a*) by inserting, immediately after the word "law" in paragraph (*a*), the words "(other than the Insolvency, Restructuring and Dissolution Act 2018)"; and

(*b*) by deleting the words "or the Official Receiver" wherever they appear.

(5) Section 21(6G) of the Companies Act is amended by deleting the words ", 232(1)(*a*)(i) and 268(4)" and substituting the words "and 232(1)(*a*)(i)".

(6) Section 27(1A) of the Companies Act is amended by deleting the words "Part X" in paragraph (*a*)(i) and substituting the words "the Insolvency, Restructuring and Dissolution Act 2018".

(7) Section 42A(2) of the Companies Act is amended by deleting the words "section 254(1)(*m*)" and substituting the words "section 125(1)(*n*) of the Insolvency, Restructuring and Dissolution Act 2018".

(8) Section 64(4) of the Companies Act is amended by deleting the words "section 290" in paragraph (*a*) and substituting the words "section 160 of the Insolvency, Restructuring and Dissolution Act 2018".

(9) Section 76(8) of the Companies Act is amended —

(*a*) by deleting the words "section 306" in paragraph (*e*) and substituting the words "section 178 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the words "section 309" in paragraph (*f*) and substituting the words "section 187 of the Insolvency, Restructuring and Dissolution Act 2018".

(10) Section 91(9) of the Companies Act is amended by deleting the words "Section 347" and substituting the words "Section 214 of the Insolvency, Restructuring and Dissolution Act 2018".

(11) Section 149 of the Companies Act is amended —

(*a*) by deleting the words "section 291(1)" in subsection (5)(*a*)(ii) and substituting the words "section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "section 254(2)" in subsection (5)(*b*) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "section 259" in subsection (6)(*b*)(iii) and substituting the words "section 130(1) of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*d*) by deleting the words "Division 5 of Part X" in subsection (8) and substituting the words "Division 1 of Part 10 of the Insolvency, Restructuring and Dissolution Act 2018".

(12) Section 149A(1) of the Companies Act is amended by deleting the words "section 254(1)(*m*)" and substituting the words "section 125(1)(*n*) of the Insolvency, Restructuring and Dissolution Act 2018".

(13) Section 154 of the Companies Act is amended by deleting subsection (2) and substituting the following subsection:

"(2) The court may, in addition to any other sentence imposed, make a disqualification order against any person who is convicted in Singapore of any of the following offences:

(*a*) any offence in connection with the formation or management of a corporation;

(*b*) any offence under section 157 or 396B;

(*c*) any offence under section 237 or 239 of the Insolvency, Restructuring and Dissolution Act 2018.".

(14) Section 155(11) of the Companies Act is amended by deleting the words "section 350(1)" and substituting the words "section 245(1) of the Insolvency, Restructuring and Dissolution Act 2018".

(15) Section 210 of the Companies Act is amended —

(*a*) by deleting subsections (3A) and (4A);

(*b*) by deleting the words "Subject to subsection (4A), the" in subsection (4) and substituting the word "The";

(*c*) by deleting the words "section 322" in subsection (10B)(*a*) and (*b*) and substituting in each case the words "section 197 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*d*) by deleting the words "this Act" in the definition of "company" in subsection (11) and substituting the words "the Insolvency, Restructuring and Dissolution Act 2018".

(16) Sections 211A to 211J of the Companies Act are repealed.

(17) Section 212 of the Companies Act is amended —

(*a*) by inserting, immediately after the words "under this Part" in subsection (1), the words "or section 71 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words ", subject to subsection (1A)," in subsection (1);

(*c*) by deleting subsection (1A); and

(*d*) by deleting the words "this Act" in subsection (6) and substituting the words "the Insolvency, Restructuring and Dissolution Act 2018".

(18) Section 215(7) of the Companies Act is amended by deleting the words "section 322" in paragraphs (*a*) and (*b*) and substituting in each case the words "section 197 of the Insolvency, Restructuring and Dissolution Act 2018".

(19) Section 215K(2) of the Companies Act is amended by deleting the words "section 322" in paragraphs (*a*) and (*b*) and substituting in each case the words "section 197 of the Insolvency, Restructuring and Dissolution Act 2018".

(20) Section 216(3) of the Companies Act is amended by deleting the words "this Act" and substituting the words "the Insolvency, Restructuring and Dissolution Act 2018".

(21) Part VIII (sections 217 to 227) of the Companies Act is repealed.

(22) Part VIIIA (sections 227AA to 227X) of the Companies Act is repealed.

(23) Section 231(8) of the Companies Act is amended by deleting the words "section 328(1)(*a*)" and substituting the words "section 203(1)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018".

(24) Section 241(1) of the Companies Act is amended by deleting the words "this Act" and substituting the words "the Insolvency, Restructuring and Dissolution Act 2018".

(25) Part X of the Companies Act is amended by deleting the Part heading and substituting the following Part heading:

"DISSOLUTION".

(26) Division 1 of Part X (sections 247 to 252) of the Companies Act is repealed.

(27) Division 2 of Part X (sections 253 to 289) of the Companies Act is repealed.

(28) Division 3 of Part X (sections 290 to 312) of the Companies Act is repealed.

(29) Subdivisions (1) to (4) of Division 4 of Part X (sections 313 to 342) (including Division 4 heading) of the Companies Act are repealed.

(30) Part X of the Companies Act is amended by deleting Subdivision (5) heading of Division 4.

(31) Section 343 of the Companies Act is repealed.

(32) Section 344(3) of the Companies Act is amended by inserting, immediately after the words "Division 2" in paragraph (*c*), the words "of Part 8 of the Insolvency, Restructuring and Dissolution Act 2018".

(33) Sections 345 to 349 of the Companies Act are repealed.

(34) Division 5 of Part X (sections 350 to 354) of the Companies Act is repealed.

(35) Division 6 of Part X (sections 354A to 354C) of the Companies Act is repealed.

(36) Section 372(4) of the Companies Act is amended by deleting the words “or 211I” and substituting the words “of this Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018”.

(37) Section 377 of the Companies Act is amended —

(*a*) by deleting subsection (2) and substituting the following subsection:

“(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin, each person who immediately before the commencement of the liquidation proceedings was an authorised representative must —

(*a*) within 14 days after the commencement of the liquidation or the dissolution; or

(*b*) within such further time as the Registrar in special circumstances allows,

lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment.”; and

(*b*) by deleting subsections (3), (4), (4A), (7) and (14).

(38) Section 378(2) of the Companies Act is amended by deleting the words “Part X” in paragraph (*a*)(i) and substituting the words “Part 8 of the Insolvency, Restructuring and Dissolution Act 2018”.

(39) Section 389 of the Companies Act is amended by deleting the words “or under section 285 or 286”.

(40) Section 390(3) of the Companies Act is amended by deleting the words “section 322” and substituting the words “section 197 of the Insolvency, Restructuring and Dissolution Act 2018”.

(41) The Companies Act is amended by inserting, immediately after section 396A, the following section:

"**Liability where proper accounts not kept**

396B.—(1) If, on an investigation under this Act, it is shown that proper books of account were not kept by the company throughout the shorter of —

(*a*) the period of 2 years immediately preceding the commencement of the investigation; or

(*b*) the period between the incorporation of the company and the commencement of the investigation,

every officer who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person charged to prove that the person acted honestly and to show that, in the circumstances in which the business of the company was carried on, the default was excusable.

(3) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company —

(*a*) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

(*b*) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.".

(42) Section 410 of the Companies Act is amended —

(*a*) by inserting the word "and" at the end of paragraph (*b*);

(*b*) by deleting the word "; and" at the end of paragraph (*c*) and substituting a full-stop; and

(*c*) by deleting paragraph (*d*).

(43) Section 411(1) of the Companies Act is amended by deleting paragraph (*b*).

(44) The Tenth Schedule to the Companies Act is repealed.

(45) The Eleventh Schedule to the Companies Act is repealed.

Division 2 — Other Acts

Amendment of Accounting and Corporate Regulatory Authority Act

452. The Accounting and Corporate Regulatory Authority Act (Cap. 2A, 2005 Ed.) is amended —

(*a*) by inserting, immediately after the definition of "FATF recommendation" in section 28A, the following definition:

"“Fifth Schedule Act” means any of the written laws specified in the first column of the Fifth Schedule;";

(*b*) by deleting the definition of "Registrar" in section 28A and substituting the following definition:

"“Registrar” means —

(*a*) the Registrar appointed under a scheduled Act; or

(*b*) the person specified in the second column of the Fifth Schedule, in respect of a Fifth Schedule Act specified in the first column of that Schedule;";

(*c*) by inserting, immediately after the words “scheduled Act” in paragraphs (*a*), (*b*), (*c*) and (*d*) of the definition of “transaction” in section 28A, the words “or Fifth Schedule Act”;

(*d*) by inserting, immediately after the words “scheduled Act” wherever they appear in sections 28B(1)(*b*) and (*d*), (2)(*c*), (3)(*b*) and (5)(*a*), 28C(1)(*a*) and (*b*), 28E(1)(*a*) and 28G(14), the words “or Fifth Schedule Act”;

(*e*) by inserting, immediately after the words “scheduled Acts” in section 28B(6)(*a*) and (*b*), the words “or Fifth Schedule Acts”;

(*f*) by deleting the words “Second and Fourth” in section 37 and substituting the words “Second, Fourth and Fifth”;

(*g*) by deleting the Schedule reference of the First Schedule and substituting the following Schedule reference:

“Section 5(4)”;

(*h*) by deleting the Schedule reference of the Second Schedule and substituting the following Schedule reference:

“Sections 6(1), 13(2), 28A, 31(1), 33(1) and (2), 34(1) and (5) and 37”; and

(*i*) by inserting, immediately after the Fourth Schedule, the following Schedule:

“FIFTH SCHEDULE

Sections 28A and 37

WRITTEN LAWS UNDER WHICH TRANSACTION MAY BE CARRIED OUT USING ELECTRONIC TRANSACTION SYSTEM

First column	*Second column*
1. Insolvency, Restructuring and Dissolution Act 2018	Registrar of Companies mentioned in section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018

”.

Amendment of Air Navigation Act

453. Section 29B(1) of the Air Navigation Act (Cap. 6, 2014 Ed.) is amended by deleting the words "section 127 of the Bankruptcy Act (Cap. 20)" in paragraph (*b*) and substituting the words "section 397 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Banking Act

454. The Banking Act (Cap. 19, 2008 Ed.) is amended —

(*a*) by inserting, immediately after the words "Companies Act (Cap. 50)" in section 16(3), the words "or the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "section 328(1) of the Companies Act (Cap. 50)" in section 61(2) and substituting the words "section 203(1) of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*c*) by deleting the words "section 270 of the Companies Act (Cap. 50)" in section 63(1)(*b*) and substituting the words "section 141 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Bus Services Industry Act 2015

455. The Bus Services Industry Act 2015 (Act 30 of 2015) is amended —

(*a*) by deleting paragraph (*b*) of section 21(1) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the company;";

(*b*) by deleting the full-stop at the end of paragraph (*c*) of section 21(1) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*d*) no application under section 210 of the Companies Act or section 71 of the

Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to the company, unless that person has served 14 days' written notice of that person's intention to make the application on the LTA.";

(*c*) by deleting subsection (2) of section 21 and substituting the following subsection:

"(2) The LTA must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a company that is a public bus operator holding a Class 1 bus service licence; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is a public bus operator holding a Class 1 bus service licence.";

(*d*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 33(1) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*e*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 39(10) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Business Names Registration Act 2014

456. Section 17(2) of the Business Names Registration Act 2014 (Act 29 of 2014) is amended by deleting the words "Part X of the Companies Act" in paragraph (*b*)(i) and substituting the words "Part 8 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Business Trusts Act

457. The Business Trusts Act (Cap. 31A, 2005 Ed.) is amended —

(*a*) by deleting the definition of "approved liquidator" in section 2;

(*b*) by inserting, immediately after the definition of "liabilities" in section 2, the following definition:

" "licensed insolvency practitioner" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*c*) by deleting the definition of "Official Receiver" in section 2 and substituting the following definition:

" "Official Receiver" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;"; and

(*d*) by deleting the words "an approved liquidator" in section 48(1) and substituting the words "a licensed insolvency practitioner".

Amendment of Charities Act

458. Section 32(1) of the Charities Act (Cap. 37, 2007 Ed.) is amended by deleting the words "Companies Act (Cap. 50)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Child Development Co-Savings Act

459. Section 5 of the Child Development Co-Savings Act (Cap. 38A, 2002 Ed.) is amended by deleting the words "section 98 or 99 of the Bankruptcy Act (Cap. 20)" in paragraph (*b*) and substituting the words "section 361 or 362 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Chit Funds Act

460. The Chit Funds Act (Cap. 39, 2013 Ed.) is amended —

(*a*) by deleting the words "Companies Act (Cap. 50)" in section 53(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the words "section 270 of the Companies Act (Cap. 50)" in section 54(1) and substituting the words "section 141 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Civil Aviation Authority of Singapore Act

461. The Civil Aviation Authority of Singapore Act (Cap. 41, 2014 Ed.) is amended —

(*a*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 72(6) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 73(3) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting paragraph (*b*) of section 75(1) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the company;";

(*d*) by deleting the full-stop at the end of paragraph (*c*) of section 75(1) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*d*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in

relation to the company, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority."; and

(*e*) by deleting subsection (2) of section 75 and substituting the following subsection:

"(2) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a company that is an airport licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is an airport licensee.".

Amendment of Civil Law Act

462. Section 4(1) of the Civil Law Act (Cap. 43, 1999 Ed.) is amended by deleting the words "Companies Act (Cap. 50)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Consumer Protection (Fair Trading) Act

463. Section 9(4) of the Consumer Protection (Fair Trading) Act (Cap. 52A, 2009 Ed.) is amended —

(*a*) by inserting, immediately after sub-paragraph (iv) of paragraph (*d*), the following sub-paragraph:

"(iv*a*) an order is made under section 71 of the Insolvency, Restructuring and Dissolution Act 2018 approving a compromise or an arrangement between the supplier and the supplier's creditors;";

(*b*) by deleting the words "Part VIII of the Companies Act" in paragraph (*d*)(v) and substituting the words "Part 6 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Part VIIIA of the Companies Act" in paragraph (*d*)(vi) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*d*) by deleting the words "Part X of the Companies Act" in paragraph (*d*)(vii) and substituting the words "Part 8 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Conveyancing and Law of Property Act

464. Section 73B of the Conveyancing and Law of Property Act (Cap. 61, 1994 Ed.) is repealed.

Amendment of Co-operative Societies Act

465. Section 101 of the Co-operative Societies Act (Cap. 62, 2009 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words ", the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

466. The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A, 2000 Ed.) is amended —

(*a*) by deleting the words "section 90 of the Bankruptcy Act (Cap. 20)" in section 12(6)(*a*) and substituting the words "section 352 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "section 328 of the Companies Act (Cap. 50)" in section 12(6)(*b*) and substituting the words "section 203 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Bankruptcy Act (Cap. 20)" in section 23(1) and (3) and substituting in each case the

words "Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "Bankruptcy Act" in section 23(2)(*a*) and (5)(*a*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the words "section 78(2)" in section 23(2)(*b*) and substituting the words "section 329(2)";

(*f*) by deleting the words "section 124(3)(*c*)" in section 23(2)(*c*) and substituting the words "section 394(3)(*c*)";

(*g*) by deleting the words "section 73 of the Bankruptcy Act" in section 23(5) and substituting the words "section 324 of the Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "section 127(2) of the Bankruptcy Act" in section 23(6) and substituting the words "section 397(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting the words "Companies Act (Cap. 50)" in section 24(3) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*j*) by deleting the words "Companies Act" in the definition of "company" in section 24(5) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Cross-Border Railways Act 2018

467. The Cross-Border Railways Act 2018 (Act 21 of 2018) is amended —

(*a*) by deleting the words "Companies Act (Cap. 50)" in sections 20(1)(*b*) and 24(1)(*b*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by inserting, immediately after paragraph (*b*) of section 20(1), the following paragraph:

"(*ba*) the company must not appoint an interim judicial manager under section 94(3) of the Insolvency, Restructuring and Dissolution Act 2018, unless the company has served on the Minister 14 days' notice in writing of the company's intention to make the appointment;";

(*c*) by deleting the words "or 211I of the Companies Act" in sections 20(1)(*c*) and (2)(*c*) and 24(1)(*c*) and (2)(*c*) and substituting in each case the words "of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "Companies Act" in sections 20(2)(*a*) and (*b*) and 24(2)(*a*) and (*b*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the word "or" at the end of paragraph (*b*) of section 20(2), and by inserting immediately thereafter the following paragraph:

"(*ba*) any meeting convened under section 94(7) of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company which is a concessionaire; or";

(*f*) by inserting, immediately after paragraph (*b*) of section 24(1), the following paragraph:

"(*ba*) the company must not appoint an interim judicial manager under section 94(3) of the Insolvency, Restructuring and Dissolution Act 2018, unless the company has served on the Minister 14 days' notice in writing of the company's intention to make the appointment;";

(*g*) by deleting the word "or" at the end of paragraph (*b*) of section 24(2), and by inserting immediately thereafter the following paragraph:

"(*ba*) any meeting convened under section 94(7) of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company which is a railway assets operator; or"; and

(*h*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 39(3) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Deposit Insurance and Policy Owners' Protection Schemes Act

468. The Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B, 2012 Ed.) is amended —

(*a*) by deleting the definition of "liquidator" in section 2(1) and substituting the following definition:

" "liquidator" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*b*) by deleting the words "Companies Act (Cap. 50)" in paragraph (*a*)(i) of the definition of "quantification date" in section 2(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Companies Act" in paragraphs (*a*)(iii), (iv) and (vi) and (*b*)(i), (iii), (iv) and (vi) of the definition of "quantification date" in section 2(1) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "Companies Act" in section 21(1)(*aa*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the words "Companies Act" in section 27(5) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by deleting the words "Section 322(3), (6), (7), (8) and (9) of the Companies Act (Cap. 50)" in sections 28(5) and 53(5) and substituting in each case the words "Section 197(4), (7), (8), (9) and (10) of the Insolvency, Restructuring and Dissolution Act 2018";

(*g*) by deleting the words "Companies Act" in section 28A(1)(*a*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "Companies Act" in section 46(1)(*b*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting the words "Companies Act" in section 52(5) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*j*) by deleting the words "Companies Act" in section 54A(1)(*a*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of District Cooling Act

469. The District Cooling Act (Cap. 84A, 2002 Ed.) is amended —

(*a*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 21(3) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting paragraph (*b*) of section 22(4) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the licensee;";

(*c*) by deleting the full-stop at the end of paragraph (*c*) of section 22(4) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*d*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to the licensee, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority."; and

(*d*) by deleting subsection (5) of section 22 and substituting the following subsection:

"(5) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a company that is a licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is a licensee.".

Amendment of Early Childhood Development Centres Act 2017

470. Section 16(12) of the Early Childhood Development Centres Act 2017 (Act 19 of 2017) is amended by deleting the words "section 254(2) of the Companies Act (Cap. 50)" and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Education Endowment and Savings Schemes Act

471. Section 16G(3) of the Education Endowment and Savings Schemes Act (Cap. 87A, 2009 Ed.) is amended by deleting the words "section 98 or 99 of the Bankruptcy Act (Cap. 20)" and substituting the words "section 361 or 362 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Education Service Incentive Payment Act

472. Section 7(2) of the Education Service Incentive Payment Act (Cap. 87B, 2002 Ed.) is amended by deleting the words "Bankruptcy Act (Cap. 20)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Electricity Act

473. The Electricity Act (Cap. 89A, 2002 Ed.) is amended —

(*a*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 28(3)(*b*) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 29(6) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting paragraph (*b*) of section 29(7) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to an electricity licensee without the consent of the Authority;";

(*d*) by deleting the word "and" at the end of section 29(7)(*c*);

(*e*) by deleting the full-stop at the end of paragraph (*d*) of section 29(7) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*e*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to an electricity licensee, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority.";

(*f*) by deleting subsection (8) of section 29 and substituting the following subsection:

"(8) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of an electricity licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to an electricity licensee."; and

(*g*) by inserting, immediately after the words "Companies Act (Cap. 50)" in section 44(2), the words "or the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Employment Act

474. Section 47(1) of the Employment Act (Cap. 91, 2009 Ed.) is amended —

(*a*) by deleting the words "section 328 of the Companies Act (Cap. 50)" in paragraph (*a*) and substituting the words "section 203 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the words "section 90 of the Bankruptcy Act (Cap. 20)" in paragraph (*b*) and substituting the words "section 352 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Environmental Public Health Act

475. The Environmental Public Health Act (Cap. 95, 2002 Ed.) is amended —

(*a*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 31A(6) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Part VIIIA of the Companies Act" in section 31B(3) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting paragraph (*b*) of section 31D(1) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a public waste collector licensee;";

(*d*) by deleting the word "and" at the end of section 31D(1)(*c*);

(*e*) by deleting the full-stop at the end of paragraph (*d*) of section 31D(1) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*e*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to a public waste collector licensee, unless that person has served 14 days' written notice of that person's intention to make the application on the Agency.";

(*f*) by deleting subsection (2) of section 31D and substituting the following subsection:

"(2) The Agency must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a public waste collector licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a public waste collector licensee.”; and

(*g*) by deleting the words “section 127 of the Bankruptcy Act (Cap. 20)” in section 80K(4)(*b*) and substituting the words “section 397 of the Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Exchange Control Act

476. Paragraph 6 of the Fourth Schedule to the Exchange Control Act (Cap. 99, 2000 Ed.) is amended by deleting the words “section 61(1) of the Bankruptcy Act (Cap. 20)” and substituting the words “section 311(1) of the Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Finance Companies Act

477. The Finance Companies Act (Cap. 108, 2011 Ed.) is amended —

(*a*) by deleting the words “section 328(1) of the Companies Act (Cap. 50)” in section 44(2) and substituting the words “section 203(1) of the Insolvency, Restructuring and Dissolution Act 2018”;

(*b*) by deleting the words “Companies Act (Cap. 50)” in section 54(1) and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”; and

(*c*) by deleting the words “section 270 of the Companies Act (Cap. 50)” in section 55(1)(*b*) and substituting the words “section 141 of the Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Financial Advisers Act

478. The Financial Advisers Act (Cap. 110, 2007 Ed.) is amended —

(*a*) by deleting the words "Companies Act (Cap. 50)" in section 66(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Companies Act" in section 66(2) and (3) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*c*) by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph 8 of the First Schedule and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Financial Holding Companies Act 2013

479. The Financial Holding Companies Act 2013 (Act 13 of 2013) is amended —

(*a*) by inserting, immediately after the words "Companies Act (Cap. 50)" in section 18(3), the words "or the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by inserting, immediately after the words "Companies Act (Cap. 50)" in section 24(3), the words "or the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Division 5 of Part X of the Companies Act (Cap. 50) and may be wound up by the Court under the Companies Act" in section 52(2) and substituting the words "Part 10 of the Insolvency, Restructuring and Dissolution Act 2018 and may be wound up by the Court under the Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting paragraphs (*a*) and (*b*) of section 52(3) and substituting the following paragraph:

"(*a*) in applying the provisions of the Insolvency, Restructuring and Dissolution Act 2018, any reference to the Registrar of Companies is to be read as a reference to the Registrar under the Co-operative Societies Act;"; and

(*e*) by inserting, immediately after subsection (3) of section 52, the following subsection:

"(3A) Despite subsection (2) and section 101 of the Co-operative Societies Act, in any winding up of a designated financial holding company that is a co-operative society, section 344 of the Companies Act is applicable and in applying this provision —

(*a*) any reference to the register under the Companies Act is to be read as a reference to the register of societies mentioned in section 10A(1)(*a*) of the Co-operative Societies Act; and

(*b*) any reference to the Registrar under the Companies Act is to be read as a reference to the Registrar under the Co-operative Societies Act.".

Amendment of Gas Act

480. The Gas Act (Cap. 116A, 2002 Ed.) is amended —

(*a*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 33(3) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 34(5) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting paragraph (*b*) of section 34(6) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a gas licensee without the consent of the Authority;";

(*d*) by deleting the word "and" at the end of section 34(6)(*c*);

(*e*) by deleting the full-stop at the end of paragraph (*d*) of section 34(6) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*e*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to a gas licensee, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority."; and

(*f*) by deleting subsection (7) of section 34 and substituting the following subsection:

"(7) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a gas licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a gas licensee.".

Amendment of Home Affairs Uniformed Services Superannuation Act

481. Section 8(1) of the Home Affairs Uniformed Services Superannuation Act (Cap. 126B, 2012 Ed.) is amended by deleting the words "Bankruptcy Act (Cap. 20)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Housing Developers (Control and Licensing) Act

482. Section 25(2) of the Housing Developers (Control and Licensing) Act (Cap. 130, 1985 Ed.) is amended by deleting the words "by a court under the Companies Act (Cap. 50)" in

paragraph (*a*) and substituting the words "up by a court under the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Insurance Act

483. The Insurance Act (Cap. 142, 2002 Ed.) is amended —

(*a*) by inserting, immediately after the words "Companies Act (Cap. 50)" in section 29B(3), the words "or the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Companies Act" in sections 49FO(15) and (16) and 49FP(1) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "section 410 of the Companies Act" in section 49FO(17) and substituting the words "section 448 of the Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "Part X of the Companies Act (Cap. 50)" in section 49FO(18) and substituting the words "Part 8 of the Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the words "section 327(2) of the Companies Act (which applies bankruptcy rules in the winding up of insolvent companies)," in section 49FO(19) and substituting the words "section 218(2) to (8) of the Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by deleting the semi-colon at the end of the definition of "liquidator" in section 49FO(22) and substituting a full-stop;

(*g*) by deleting the definition of "unregistered company" in section 49FO(22);

(*h*) by deleting the words "Division 5 of Part X" in section 49FP(1) and substituting the words "Part 10";

(*i*) by deleting subsection (6) of section 49FP and substituting the following subsection:

"(6) In the winding up of the affairs of an insurer under such an order, the Insolvency, Restructuring and Dissolution Act 2018 has effect subject to the following modifications:

(*a*) section 121 (or, as the case may be, section 247) of that Act and other sections so far as they relate to contributories do not apply;

(*b*) section 129 applies after, as it applies before, the making of the winding up order, and section 133(1) of that Act does not apply;

(*c*) sections 130, 194, 205, 206, 207, 224 to 233 of that Act do not apply.";

(*j*) by deleting the words "Division 5 of Part X of the Companies Act (Cap. 50) and may be wound up by the Court under the Companies Act" in section 49FQ(2) and substituting the words "Part 10 of the Insolvency, Restructuring and Dissolution Act 2018 and may be wound up by the Court under the Insolvency, Restructuring and Dissolution Act 2018";

(*k*) by deleting paragraphs (*a*) and (*b*) of section 49FQ(3) and substituting the following paragraph:

"(*a*) in applying the provisions of the Insolvency, Restructuring and Dissolution Act 2018, any reference to the Registrar of Companies is to be read as a reference to the Registrar under the Co-operative Societies Act;";

(*l*) by inserting, immediately after subsection (3) of section 49FQ, the following subsection:

"(3A) Despite subsection (2) and section 101 of the Co-operative Societies Act, in any winding up of a co-operative society that is a licensed insurer, section 344 of the Companies Act is applicable and in applying this provision —

(*a*) any reference to the register under the Companies Act is to be read as a reference to the register of societies mentioned in section 10A(1)(*a*) of the Co-operative Societies Act; and

(*b*) any reference to the Registrar under the Companies Act is to be read as a reference to the Registrar under the Co-operative Societies Act."; and

(*m*) by deleting the words "section 328(1) of the Companies Act (Cap. 50)" in section 49FR(2) and substituting the words "section 203(1) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of International Interests in Aircraft Equipment Act

484. The International Interests in Aircraft Equipment Act (Cap. 144B, 2012 Ed.) is amended —

(*a*) by deleting the definition of "commencement of insolvency proceedings" in section 2(1) and substituting the following definition:

" "commencement of insolvency proceedings" means —

(*a*) in the case of proceedings in bankruptcy under Part 16 of the Insolvency, Restructuring and Dissolution Act 2018, the date of presentation of the bankruptcy application under section 307 or 308 of that Act;

(*b*) in the case of winding up proceedings under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018, the time the winding up is deemed to have commenced under section 126 of that Act or the time specified under section 161(6) of that Act;

(*c*) in the case of a voluntary arrangement under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018, the date of the application for an interim order under section 276(1) of that Act;

(*d*) in the case of a compromise or an arrangement under section 210 of the Companies Act, the date of the application for an order under section 210(1) of that Act;

(*e*) in the case of a compromise or an arrangement under section 71 of the Insolvency, Restructuring and Dissolution Act 2018, the date of the application under section 71 of that Act; or

(*f*) in the case of judicial management proceedings under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 —

(i) the date of the application for a judicial management order under section 91 of that Act; or

(ii) the date of lodgment of the notice of appointment of the interim judicial manager under section 94(5)(*a*) of that Act;";

(*b*) by deleting the definitions of "insolvency administrator" and "insolvency proceedings" in section 2(1) and substituting the following definitions:

" "insolvency administrator" means —

(*a*) in the case of proceedings in bankruptcy under Part 16 of the Insolvency, Restructuring and Dissolution Act 2018, the trustee of the bankrupt's estate;

(*b*) in the case of winding up proceedings under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018, the liquidator or provisional liquidator; or

(*c*) in the case of judicial management proceedings under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018, the judicial manager or interim judicial manager;

"insolvency proceedings" means —

(*a*) proceedings in bankruptcy under Part 16 of the Insolvency, Restructuring and Dissolution Act 2018;

(*b*) winding up proceedings under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018;

(*c*) the making of a voluntary arrangement under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 or a compromise or an arrangement under section 210 of the Companies Act or section 71 of the Insolvency,

Restructuring and Dissolution Act 2018; or

(*d*) judicial management proceedings under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;"; and

(*c*) by deleting subsection (12) of section 4 and substituting the following subsection:

"(12) In this section, "insolvency law" means a provision of Part VII of the Companies Act, or Part 5, 7, 8, 9, 10, 11, 14 or 16 of the Insolvency, Restructuring and Dissolution Act 2018.".

Amendment of Land Titles Act

485. Section 110(1A) of the Land Titles Act (Cap. 157, 2004 Ed.) is amended by deleting the words "Bankruptcy Act (Cap. 20)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Land Titles (Strata) Act

486. Section 83 of the Land Titles (Strata) Act (Cap. 158, 2009 Ed.) is amended by deleting the words "an approved liquidator under the Companies Act (Cap. 50)" and substituting the words "a licensed insolvency practitioner under the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Legal Aid and Advice Act

487. Section 12(4) of the Legal Aid and Advice Act (Cap. 160, 2014 Ed.) is amended by deleting the words "rules made under section 166 of the Bankruptcy Act (Cap. 20)" in paragraph (*d*) and substituting the words "regulations made under section 449 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Legal Profession Act

488. The Legal Profession Act (Cap. 161, 2009 Ed.) is amended —

(*a*) by deleting the words "section 124(5)(*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*h*), (*i*), (*k*), (*l*) or (*m*) of the Bankruptcy Act (Cap. 20)" in sections 82A(3)(*b*), 82B(2)(*c*), 83(2)(*c*) and 83A(2)(*c*) and substituting in each case the words "section 394(5)(*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*h*), (*i*), (*k*) or (*l*) of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Companies Act (Cap. 50)" in section 160(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Companies Act" in section 160(2) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*d*) by deleting sub-paragraph (*c*) of paragraph 5(1) of the First Schedule and substituting the following sub-paragraph:

"(*c*) a judicial manager has been appointed, or a winding up order has been made under the Insolvency, Restructuring and Dissolution Act 2018, with respect to a law corporation, or a resolution for voluntary winding up has been passed with respect to a law corporation (other than a resolution passed solely for the purposes of its reconstruction or its amalgamation with another company); or".

Amendment of Limited Liability Partnerships Act

489. The Limited Liability Partnerships Act (Cap. 163A, 2006 Ed.) is amended —

(*a*) by deleting the definition of "Official Receiver" in section 2(1) and substituting the following definition:

""Official Receiver" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*b*) by deleting the words "Part X of the Companies Act (Cap. 50)" in section 19A(2)(*c*)(i) and substituting the words "Part 8 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting sub-paragraphs (*c*) and (*d*) of paragraph 2(1) of the Fourth Schedule and substituting the following sub-paragraphs:

"(*c*) a chargee or other security holder of any property of the limited liability partnership;

(*d*) an auditor of the limited liability partnership;

(*e*) a partner, manager or employee of the limited liability partnership;

(*f*) a director, secretary or employee of any corporation that is a chargee or other security holder of the property of the limited liability partnership;

(*g*) any person who is neither a licensed insolvency practitioner nor the Official Receiver.";

(*d*) by deleting the words "or (*d*)" in paragraph 2(2) of the Fourth Schedule and substituting the words "or (*g*)";

(*e*) by deleting the definition of "approved liquidator" in paragraph 1 of the Fifth Schedule;

(*f*) by inserting, immediately after the definition of "Court" in paragraph 1 of the Fifth Schedule, the following definition:

" "licensed insolvency practitioner" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*g*) by deleting the words "an approved liquidator" in paragraphs 10(1)(*a*), 15 and 37(1) of the Fifth Schedule and substituting in each case the words "a licensed insolvency practitioner"; and

(*h*) by deleting paragraph 11 of the Fifth Schedule and substituting the following paragraph:

“**Appointment, style, etc., of liquidators**

11. The following provisions have effect on a winding up order being made:

(*a*) the Court may appoint a licensed insolvency practitioner or, if the Official Receiver consents, the Official Receiver, to be the liquidator;

(*b*) at any time when the Official Receiver is the liquidator of the limited liability partnership, the Official Receiver may summon separate meetings of the creditors and partners of the limited liability partnership 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;

(*c*) the Court may make any appointment and order required to give effect to any determination mentioned in sub-paragraph (*b*), and, if there is a difference between the determinations of the meetings of the creditors and partners in respect of the matter mentioned in sub-paragraph (*b*), the Court must decide the difference and make such order on the difference as the Court may think fit;

(*d*) in a case where a winding up order is made under paragraph 3(1)(*f*) on the ground that the limited liability partnership is being used for purposes against national security or interest, the Official Receiver must be the liquidator of the limited liability partnership;

(*e*) any vacancy in the office of a liquidator appointed by the Court must be filled by the Court, and pending the appointment of a replacement liquidator by the Court, the Official Receiver is by virtue of the Official Receiver’s office the liquidator during such vacancy;

(*f*) a liquidator must be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular limited liability partnership in respect of which the liquidator is appointed, and not by the liquidator’s individual name.”.

Amendment of Limited Partnerships Act

490. Section 17A(2) of the Limited Partnerships Act (Cap. 163B, 2010 Ed.) is amended by deleting the words "Part X of the Companies Act" in paragraph (*c*)(i) and substituting the words "Part 8 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Maritime and Port Authority of Singapore Act

491. The Maritime and Port Authority of Singapore Act (Cap. 170A, 1997 Ed.) is amended —

(*a*) by deleting paragraph (*d*) of the definition of "officer" in section 86A(1) and substituting the following paragraph:

"(*d*) any judicial manager of the corporation appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;";

(*b*) by deleting the definition of "Official Receiver" in section 86A(1) and substituting the following definition:

" "Official Receiver" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;";

(*c*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 87(3) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting paragraph (*b*) of section 88(4) and substituting the following paragraph:

"(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the company;";

(*e*) by deleting the full-stop at the end of paragraph (*c*) of section 88(4) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*d*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to the company, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority.";

(*f*) by deleting subsection (5) of section 88 and substituting the following subsection:

"(5) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a company that is a relevant public licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is a relevant public licensee."; and

(*g*) by deleting the words "section 254(2) of the Companies Act (Cap. 50)" in section 88(7) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Monetary Authority of Singapore Act

492. The Monetary Authority of Singapore Act (Cap. 186, 1999 Ed.) is amended —

(*a*) by inserting, immediately after section 40, the following section:

"Provisions as to compromise or arrangement relating to certain financial institutions, etc.

40A.—(1) This section applies despite any other written law.

(2) In any proceedings under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is a Type A financial institution, the Authority —

(*a*) has the same powers and rights as a creditor of the company under the Companies Act or the Insolvency, Restructuring and Dissolution Act 2018 respectively (including the right to appear and be heard before the Court in any proceedings under those provisions); but

(*b*) does not have the right to vote at any meeting summoned under section 210 of the Companies Act.

(3) In the case of a company that is a Type B financial institution, the Court must not —

(*a*) approve under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 any compromise or arrangement that has been proposed for the purposes of or in connection with any scheme mentioned in section 212(1) of the Companies Act under which the whole or any part of the undertaking or the property of the company is to be transferred; or

(*b*) without affecting paragraph (*a*), make any order under section 212(1) of the Companies Act providing for the transfer

of the whole or any part of the undertaking or the property of the company,

unless the Minister has consented to such compromise or arrangement or such transfer (as the case may be) or has certified that the Minister's consent is not required.

(4) In the case of a company that is a Type C financial institution, the Court must not —

(*a*) approve under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 any compromise or arrangement that has been proposed for the purposes of or in connection with any scheme mentioned in section 212(1) of the Companies Act under which the whole or any part of the undertaking or the property of the company is to be transferred; or

(*b*) without affecting paragraph (*a*), make any order under section 212(1) of the Companies Act providing for the transfer of the whole or any part of the undertaking or the property of the company,

unless the Authority has consented to such compromise or arrangement or such transfer (as the case may be) or has certified that the Authority's consent is not required.

(5) For the purposes of this section, the Authority may make regulations under section 41 to prescribe any financial institution or class of financial institutions as a Type A financial institution, Type B financial institution or Type C financial institution.

(6) In this section, "company" means any corporation liable to be wound up under the Insolvency, Restructuring and Dissolution Act 2018.";

(*b*) by deleting paragraph (*b*) of section 53(2) and substituting the following paragraph:

"(*b*) that no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the specified financial institution, or that the specified financial institution be discharged from judicial management;";

(*c*) by deleting the words "section 254(1) of the Companies Act (Cap. 50)" in section 54(1) and substituting the words "section 125(1) of the Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "section 351(1) of the Companies Act" in section 54(2) and substituting the words "section 246(1) of the Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the words "sections 254(2) and 351(2) of the Companies Act" in section 54(3) and substituting the words "sections 125(2) and 246(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by deleting the words "section 254(1)(*e*) or 351(1)(*c*)(ii) of the Companies Act" in section 54(3) and substituting the words "section 125(1)(*e*) or 246(1)(*c*)(ii) of that Act";

(*g*) by deleting the words "Companies Act" in section 54(4)(*a*), (7) and (8) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "section 263(*a*), (*d*), (*da*) or (*e*) of the Companies Act" in section 54(5) and substituting the words "section 134(*a*), (*d*) or (*e*) of the Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting the words "section 350 of the Companies Act" in the definition of "unregistered company" in section 54(9) and substituting the words "section 245 of the Insolvency, Restructuring and Dissolution Act 2018";

(*j*) by deleting the words "Section 259 of the Companies Act (Cap. 50) shall" in sections 58(11) and 67(8) and substituting in each case the words "Section 130(1) of the Insolvency, Restructuring and Dissolution Act 2018 does";

(*k*) by deleting the words "no judicial management order under Part VIIIA of the Companies Act (Cap. 50) shall be made" in section 59(1) and substituting the words "no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*l*) by deleting the words "no judicial management order under Part VIIIA of the Companies Act shall be made" in sections 67(13)(*h*) and 70(13)(*b*) and substituting in each case the words "no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*m*) by deleting the words "no judicial management order under Part VIIIA of the Companies Act (Cap. 50) may be made" in section 77(1)(*b*) and substituting the words "no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*n*) by inserting, immediately after the words "Companies Act" in section 78(10), the words "or the Insolvency, Restructuring and Dissolution Act 2018";

(*o*) by deleting the words "section 328(1) of the Companies Act (Cap. 50)" in section 110 and substituting the words "section 203(1) of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*p*) by deleting the words ", the Bankruptcy Act (Cap. 20) and the Companies Act (Cap. 50)" in section 122 and substituting the words ", the Companies Act and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Moneylenders Act

493. Section 11D(3) of the Moneylenders Act (Cap. 188, 2010 Ed.) is amended —

(*a*) by deleting the words "under the Bankruptcy Act (Cap. 20)" in paragraph (*a*);

(*b*) by deleting the words "Companies Act" in paragraphs (*c*), (*d*), (*e*), (*f*) and (*g*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018 or any previous written law"; and

(*c*) by inserting, immediately after paragraph (*d*), the following paragraph:

"(*da*) the lodgment of a written notice of the appointment of an interim judicial manager under section 94(5)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 in respect of —

(i) the licensee;

(ii) any partner or substantial shareholder of the licensee; or

(iii) any manager of the licensee, where the licensee is a limited liability partnership;".

Amendment of Motor Vehicles (Third-Party Risks and Compensation) Act

494. The Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 189, 2000 Ed.) is amended —

(*a*) by deleting the words "section 148 of the Bankruptcy Act (Cap. 20)" in sections 10(2) and 11(2)(*a*) and substituting in each case the words "section 419 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Bankruptcy Act (Cap. 20)" in section 10(2) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*c*) by deleting the words "section 148 of the Bankruptcy Act" in section 10(3) and substituting the words "section 419 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Mutual Assistance in Criminal Matters Act

495. The Mutual Assistance in Criminal Matters Act (Cap. 190A, 2001 Ed.) is amended —

(*a*) by deleting item 38A of the Second Schedule;

(*b*) by inserting, immediately after item 105B of the Second Schedule, the following items:

"**Insolvency, Restructuring and Dissolution Act 2018**

105C. Section 238(4)	Fraudulent trading by responsible person
105D. Section 239(6)	Wrongful trading by responsible person";

(*c*) by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph 13(1) and (3) of the Third Schedule and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the words "Bankruptcy Act" in paragraph 13(2)(*a*) of the Third Schedule and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*e*) by deleting the words "section 78(2) of the Bankruptcy Act" in paragraph 13(2)(*b*) of the Third Schedule and substituting the words "section 329(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by deleting the words "section 124(3)(*c*) of the Bankruptcy Act" in paragraph 13(2)(*c*) of the Third Schedule and substituting the words "section 394(3)(*c*) of the Insolvency, Restructuring and Dissolution Act 2018";

(*g*) by deleting the words "section 73 of the Bankruptcy Act" in paragraph 13(5) of the Third Schedule and substituting the words "section 324 of the Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "section 127(2) of the Bankruptcy Act" in paragraph 13(6) of the Third Schedule and substituting the words "section 397(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting the words "Companies Act (Cap. 50)" in paragraph 14(3) of the Third Schedule and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*j*) by deleting the words "Companies Act" in the definition of "company" in paragraph 14(5) of the Third Schedule and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Mutual Benefit Organisations Act

496. Section 31(1) of the Mutual Benefit Organisations Act (Cap. 191, 1985 Ed.) is amended —

(*a*) by deleting the words "Companies Act" in paragraph (*e*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the marginal reference "Cap. 50." in paragraph (*e*).

Amendment of Nanyang Technological University (Corporatisation) Act

497. Section 7(2) of the Nanyang Technological University (Corporatisation) Act (Cap. 192A, 2006 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of National University of Singapore (Corporatisation) Act

498. Section 7(2) of the National University of Singapore (Corporatisation) Act (Cap. 204A, 2006 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Parking Places Act

499. Section 8P(10) of the Parking Places Act (Cap. 214, 2014 Ed.) is amended by deleting the words "section 254(2) of the Companies Act (Cap. 50)" and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Pawnbrokers Act 2015

500. The Pawnbrokers Act 2015 (Act 2 of 2015) is amended —

(*a*) by deleting the words "Companies Act" in section 2(2)(*a*)(v) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018 or any previous written law";

(*b*) by inserting, immediately after paragraph (*c*) of section 29(1), the following paragraph:

"(*ca*) an application has been made to the court for an order under section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in respect of the licensee;";

(*c*) by deleting the words "Companies Act (Cap. 50)" in sections 29(1)(*d*) and 40(*b*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by inserting, immediately after paragraph (*d*) of section 29(1), the following paragraph:

"(*da*) a written notice of the appointment of an interim judicial manager has been lodged under section 94(5)(*a*) of the Insolvency,

Restructuring and Dissolution Act 2018 in respect of the licensee;”; and

(*e*) by deleting the words “Companies Act” in section 29(1)(*e*) and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Payment and Settlement Systems (Finality and Netting) Act

501. The Payment and Settlement Systems (Finality and Netting) Act (Cap. 231, 2003 Ed.) is amended —

(*a*) by deleting the words “Bankruptcy Act (Cap. 20)” in paragraph (*a*) of the definition of “relevant office holder” in section 2(1) and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”;

(*b*) by deleting paragraphs (*a*) and (*b*) of section 2(2) and substituting the following paragraph:

“(*a*) the Insolvency, Restructuring and Dissolution Act 2018; and”;

(*c*) by deleting the words “section 110 of the Bankruptcy Act (Cap. 20) and section 332 of the Companies Act (Cap. 50)” in section 9(*a*) and substituting the words “sections 230, 231, 373 and 374 of the Insolvency, Restructuring and Dissolution Act 2018”;

(*d*) by deleting the words “section 77 of the Bankruptcy Act and section 259 of the Companies Act” in section 9(*b*) and substituting the words “sections 130(1) and 328 of the Insolvency, Restructuring and Dissolution Act 2018”;

(*e*) by deleting the words “section 211D of the Companies Act” in section 9(*c*) and substituting the words “section 66 of the Insolvency, Restructuring and Dissolution Act 2018”;

(*f*) by repealing section 10 and substituting the following section:

"**Adjustment of prior transactions**

10. Without limiting section 8, no order may be made by a court under section 67, 101, 224, 225, 228, 361, 362, 366 or 438 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a transfer order or any disposition of property pursuant to such an order.";

(*g*) by deleting the words "section 87 or 88 of the Bankruptcy Act and section 327 of the Companies Act" in section 11(2) and substituting the words "sections 218, 219, 345 and 346 of the Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "section 88 of the Bankruptcy Act or section 327 of the Companies Act" in section 11(2)(*b*) and substituting the words "section 219 or 346 of the Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting the word "or" at the end of paragraph (*a*) of section 12, and by inserting immediately thereafter the following paragraph:

"(*aa*) a resolution for the participant to be placed under the judicial management of a judicial manager was passed under section 94(11) of the Insolvency, Restructuring and Dissolution Act 2018; or";

(*j*) by inserting, immediately after paragraph (*a*) of section 16(1), the following paragraph:

"(*aa*) the passing of a resolution for the participant to be placed under the judicial management of a judicial manager under section 94(11) of the Insolvency, Restructuring and Dissolution Act 2018;"; and

(*k*) by deleting the words "(1)(*a*) or (*b*)" in section 16(3)(*b*) and substituting the words "(1)(*a*), (*aa*) or (*b*)".

Amendment of Prevention of Corruption Act

502. Section 4E(2) of the Prevention of Corruption Act (Cap. 241, 1993 Ed.) is amended by deleting the words “Bankruptcy Act (Cap. 20)” and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Private Education Act

503. Section 60(7) of the Private Education Act (Cap. 247A, 2011 Ed.) is amended by deleting the words “Companies Act (Cap. 50)” and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Public Utilities Act

504. Section 41(8) of the Public Utilities Act (Cap. 261, 2002 Ed.) is amended by deleting the words “section 127 of the Bankruptcy Act (Cap. 20)” in paragraph (*b*) and substituting the words “section 397 of the Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Rapid Transit Systems Act

505. The Rapid Transit Systems Act (Cap. 263A, 2004 Ed.) is amended —

(*a*) by deleting the words “Companies Act (Cap. 50)” in section 27A(4) and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”;

(*b*) by deleting the words “section 254(2) of the Companies Act (Cap. 50)” in section 27B(5) and substituting the words “section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018”;

(*c*) by deleting paragraph (*b*) of section 27D(1) and substituting the following paragraph:

“(*b*) no judicial manager may be appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the company;”;

(*d*) by deleting the full-stop at the end of paragraph (*c*) of section 27D(1) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(*d*) no application under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 may be made by any person in relation to the company, unless that person has served 14 days' written notice of that person's intention to make the application on the Authority."; and

(*e*) by deleting subsection (2) of section 27D and substituting the following subsection:

"(2) The Authority must be a party to —

(*a*) any proceedings under the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of the affairs of a company that is a licensee; or

(*b*) any proceedings relating to the making of an order under section 210 of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a company that is a licensee.".

Amendment of Registration of Criminals Act

506. Part II of the First Schedule to the Registration of Criminals Act (Cap. 268, 1985 Ed.) is amended by inserting, immediately after the item relating to the "House to House and Street Collections Act", the following item:

"Insolvency, Restructuring and Dissolution Act 2018	. . .	Sections 236, 405, 406, 407, 408, 409, 410, 411(1) and (2), 412, 413, 414, 415 and 416(1), (2) and (3).".

Amendment of Securities and Futures Act

507. The Securities and Futures Act (Cap. 289, 2006 Ed.) is amended —

(*a*) by inserting, immediately after the words "Companies Act" in section 2(2)(*d*)(iii), the words "or section 71 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph (*a*) of the definition of "relevant office holder" in section 48(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting paragraphs (*a*) and (*b*) of section 48(4) and substituting the following paragraph:

"(*a*) the Insolvency, Restructuring and Dissolution Act 2018; and";

(*d*) by deleting subsection (3) of section 81D and substituting the following subsection:

"(3) Section 210 of the Companies Act and sections 71, 129, 130(2), 133(1), 170(1), 187, 276, 325 and 327 of the Insolvency, Restructuring and Dissolution Act 2018 do not prevent, or interfere with, any default proceedings.";

(*e*) by deleting the words "sections 87 and 88 of the Bankruptcy Act (Cap. 20) and section 327 of the Companies Act (Cap. 50)" in section 81F(2) and substituting the words "sections 218, 219, 345 and 346 of the Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by deleting the words "section 88 of the Bankruptcy Act or section 327 of the Companies Act" in section 81F(2)(*b*) and substituting the words "section 219 or 346 of the Insolvency, Restructuring and Dissolution Act 2018";

(*g*) by deleting the words "Section 110 of the Bankruptcy Act (Cap. 20) and section 332 of the Companies Act (Cap. 50)" in section 81G(1) and substituting the words "Sections 230, 231, 373 and 374 of the Insolvency, Restructuring and Dissolution Act 2018";

(*h*) by deleting the words "Section 77 of the Bankruptcy Act and sections 259 and 299(1) of the Companies Act" in section 81G(2) and substituting the words "Sections 130(1), 170(1) and 328 of the Insolvency, Restructuring and Dissolution Act 2018";

(*i*) by deleting paragraphs (*a*), (*b*) and (*c*) of section 81H(1) and substituting the following paragraph:

> "section 224, 225, 228, 361, 362, 366 or 438 of the Insolvency, Restructuring and Dissolution Act 2018.";

(*j*) by deleting the words "section 291(1) of the Companies Act (Cap. 50)" in paragraph (*b*) of the definition of "specified event" in section 81I(4) and substituting the words "section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018";

(*k*) by deleting the words "section 296 of the Companies Act" in paragraph (*c*) of the definition of "specified event" in section 81I(4) and substituting the words "section 166 of the Insolvency, Restructuring and Dissolution Act 2018";

(*l*) by deleting paragraph (*e*) of the definition of "specified event" in section 81I(4) and substituting the following paragraph:

> "(*e*) the appointment of a judicial manager under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in respect of the second participant or that person, as the case may be;";

(*m*) by deleting the words "Bankruptcy Act (Cap. 20)" in section 186(2) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*n*) by deleting the words "Part V of the Bankruptcy Act" in section 186(3) and (4)(*a*), (*b*) and (*c*) and substituting in each case the words "Part 14 of the Insolvency, Restructuring and Dissolution Act 2018";

(*o*) by deleting the words "section 306 of the Companies Act (Cap. 50)" in section 273(1)(*ci*) and substituting the words "section 178 of the Insolvency, Restructuring and Dissolution Act 2018";

(*p*) by deleting the definition of "Official Receiver" in section 295A(14) and substituting the following definition:

"“Official Receiver” has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018;"; and

(*q*) by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph 4 of the Third Schedule and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore Armed Forces Act

508. Section 205A(2) of the Singapore Armed Forces Act (Cap. 295, 2000 Ed.) is amended by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph (*b*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore Institute of Technology Act

509. Section 7(2) of the Singapore Institute of Technology Act (Cap. 299B, 2015 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore Management University Act

510. Section 5(2) of the Singapore Management University Act (Cap. 302A, 2014 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore Tourism (Cess Collection) Act

511. Section 24 of the Singapore Tourism (Cess Collection) Act (Cap. 305C, 1997 Ed.) is amended —

(*a*) by deleting the words "section 90 of the Bankruptcy Act (Cap. 20)" in subsection (1) and substituting the words "section 352 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the words "section 328 of the Companies Act (Cap. 50)" in subsection (2) and substituting the words "section 203 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore University of Social Sciences Act 2017

512. Section 7(2) of the Singapore University of Social Sciences Act 2017 (Act 30 of 2017) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Singapore University of Technology and Design Act

513. Section 7(2) of the Singapore University of Technology and Design Act (Cap. 305E, 2012 Ed.) is amended by inserting, immediately after the words "Companies Act (Cap. 50)", the words "and the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Skills Development Levy Act

514. Section 24 of the Skills Development Levy Act (Cap. 306, 2012 Ed.) is amended —

(*a*) by deleting the words "section 90 of the Bankruptcy Act (Cap. 20)" in subsection (1) and substituting the words "section 352 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the words "section 328 of the Companies Act (Cap. 50)" in subsection (2) and substituting the words "section 203 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Societies Act

515. Section 25(1A) of the Societies Act (Cap. 311, 2014 Ed.) is amended by deleting the words "Companies Act (Cap. 50)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Stamp Duties Act

516. Section 36 of the Stamp Duties Act (Cap. 312, 2006 Ed.) is amended by deleting the words "Bankruptcy Act (Cap. 20)" in paragraph (*h*) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Telecommunications Act

517. The Telecommunications Act (Cap. 323, 2000 Ed.) is amended —

(*a*) by deleting the words "Part VIIIA of the Companies Act (Cap. 50)" in section 32I(3)(*b*) and substituting the words "Part 7 of the Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "or 211I of the Companies Act (Cap. 50)" in sections 32J(3)(*a*) and 32L(1)(*b*) and substituting in each case the words "of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018";

(*c*) by deleting the words "Companies Act" in sections 32J(3)(*b*) and (*c*) and 32L(1)(*c*) and (2)(*b*) and (*c*) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018";

(*d*) by deleting the word "or" at the end of paragraph (*b*) of section 32J(3), and by inserting immediately thereafter the following paragraph:

"(*ba*) any meeting convened under section 94(7) of the Insolvency, Restructuring and Dissolution Act 2018 in relation to the specified telecommunication licensee; or";

(*e*) by deleting the words "section 254(2) of the Companies Act" in section 32J(6) and substituting the words "section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018";

(*f*) by inserting, immediately after paragraph (*c*) of section 32L(1), the following paragraph:

"(*ca*) a specified telecommunication licensee must not appoint an interim judicial manager under section 94(3) of the Insolvency, Restructuring and Dissolution Act 2018, unless that licensee has served 14 days' notice in writing of that licensee's intention to make the appointment on the Authority;";

(*g*) by deleting the words "or 211I of the Companies Act" in section 32L(2)(*a*) and substituting the words "of the Companies Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*h*) by deleting the word "and" at the end of paragraph (*b*) of section 32L(2), and by inserting immediately thereafter the following paragraph:

"(*ba*) any meeting convened under section 94(7) of the Insolvency, Restructuring and Dissolution Act 2018 in relation to a specified telecommunication licensee; and".

Amendment of Third Parties (Rights against Insurers) Act

518. The Third Parties (Rights against Insurers) Act (Cap. 395, 1994 Ed.) is amended —

(*a*) by deleting the words "section 124 of the Bankruptcy Act" in sections 1(2) and (3) and 2(1) and substituting in each case the words "section 419 of the Insolvency, Restructuring and Dissolution Act 2018"; and

(*b*) by deleting the marginal reference "Cap. 20." in sections 1(2) and 2(1).

Amendment of Third-Party Taxi Booking Service Providers Act 2015

519. Section 28 of the Third-Party Taxi Booking Service Providers Act 2015 (Act 17 of 2015) is amended by deleting the words "section 127 of the Bankruptcy Act (Cap. 20)" in paragraph (*b*) and substituting the words "section 397 of the Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Trade Unions Act

520. Section 20(3) of the Trade Unions Act (Cap. 333, 2004 Ed.) is amended by deleting the words "Companies Act (Cap. 50)" and substituting the words "Insolvency, Restructuring and Dissolution Act 2018".

Amendment of Trust Companies Act

521. The Trust Companies Act (Cap. 336, 2006 Ed.) is amended —

(*a*) by deleting the words "Companies Act (Cap. 50)" in section 12(1) and substituting the words "Insolvency, Restructuring and Dissolution Act 2018";

(*b*) by deleting the words "Companies Act" in section 12(2) and (3) and substituting in each case the words "Insolvency, Restructuring and Dissolution Act 2018"; and

(*c*) by inserting, immediately after the words "Internal Security Act (Cap. 143)," in the definition of "specified written law" in Part III of the Third Schedule, the words "the Insolvency, Restructuring and Dissolution Act 2018,".

Amendment of Trustees Act

522. The Trustees Act (Cap. 337, 2005 Ed.) is amended —

(*a*) by repealing section 86 and substituting the following section:

"**Dispositions and trusts created to defraud creditors**

86. To avoid doubt, every settlement or disposition of property made or caused to be made on trust, before, on or after the date of commencement of section 438 of the Insolvency, Restructuring and Dissolution Act 2018, that is a transaction at an undervalue within the meaning in that section, is subject to that section."; and

(*b*) by repealing section 87 and substituting the following section:

"**Effect of Insolvency, Restructuring and Dissolution Act 2018 on transactions at undervalue and unfair preferences**

87.—(1) To avoid doubt, every settlement or disposition of property made or caused to be made on trust, before, on or after the date of commencement of section 522(*b*) of the Insolvency, Restructuring and Dissolution Act 2018, that is —

(*a*) a transaction at an undervalue as defined in section 361 (read with sections 363 and 364) of the Insolvency, Restructuring and Dissolution Act 2018; or

(*b*) an unfair preference as defined in section 362 (read with sections 363 and 364) of the Insolvency, Restructuring and Dissolution Act 2018,

is subject to the respective sections, as the case may be.

(2) Where the person making the settlement or disposition is a body corporate, the provisions of sections 224 to 227 of the Insolvency, Restructuring and Dissolution Act 2018 are to apply.”.

Amendment of Women’s Charter

523. Section 57(1) of the Women’s Charter (Cap. 353, 2009 Ed.) is amended by deleting the words “Companies Act (Cap. 50)” and substituting the words “Insolvency, Restructuring and Dissolution Act 2018”.

Amendment of Work Injury Compensation Act

524. Section 19(4) of the Work Injury Compensation Act (Cap. 354, 2009 Ed.) is amended —

(*a*) by deleting the words “section 90 of the Bankruptcy Act (Cap. 20)” in paragraph (*a*) and substituting the words “section 352 of the Insolvency, Restructuring and Dissolution Act 2018”;

(*b*) by deleting the words “section 328 of the Companies Act (Cap. 50)” in paragraph (*b*) and substituting the words “section 203 of the Insolvency, Restructuring and Dissolution Act 2018”;

(*c*) by deleting the words “section 226 of the Companies Act” in paragraph (*c*) and substituting the words “section 86 of the Insolvency, Restructuring and Dissolution Act 2018”; and

(*d*) by deleting the words “section 226 of the Companies Act (Cap. 50)” in paragraph (iii) and substituting the words “section 86 of the Insolvency, Restructuring and Dissolution Act 2018”.

PART 25

SAVING AND TRANSITIONAL PROVISIONS

Saving and transitional provisions relating to repeal of Bankruptcy Act

525.—(1) Parts 3 and 13 to 22 do not apply to or in relation to the following, and despite section 450, the Bankruptcy Act (called in this section the repealed Act) as in force immediately before the appointed day continues to apply to or in relation to the following, as if Parts 3 and 13 to 22 and section 450 had not been enacted:

(*a*) any application for an interim order made under section 45 of the repealed Act before the appointed day;

(*b*) any bankruptcy application made before the appointed day;

(*c*) any application for an order for the administration in bankruptcy of the estate of a deceased debtor made under section 148 of the repealed Act before the appointed day;

(*d*) any application for a second or subsequent bankruptcy order against a bankrupt made before, on or after the appointed day, where the bankrupt is a bankrupt pursuant to a bankruptcy order made under the repealed Act;

(*e*) any request to the Court, received before the appointed day, seeking aid in respect of an order of a court of Malaysia or any designated country having jurisdiction in bankruptcy and insolvency.

(2) For the purposes of subsection (1) —

(*a*) any reference in the repealed Act to "Official Assignee" is to be read as a reference to the Official Assignee appointed under section 16(1) of this Act; and

(*b*) "appointed day" means the date Parts 3 and 13 to 22 and section 450 come into operation.

(3) Despite section 450, the Bankruptcy Estates Account mentioned in section 27 of the repealed Act continues and is deemed to be the Bankruptcy Estates Account mentioned in section 28 of this Act.

(4) Despite section 450, the Debt Repayment Schemes Account mentioned in section 27 of the repealed Act continues and is deemed to be the Debt Repayment Schemes Account mentioned in section 28 of this Act.

(5) Despite section 450, the Debt Repayment Scheme Assistance Fund mentioned in section 164A of the repealed Act continues and is deemed to be the Debt Repayment Scheme Assistance Fund mentioned in section 435 of this Act.

(6) Despite section 450, the Insolvency Assistance Fund mentioned in section 165 of the repealed Act continues and is deemed to be the Insolvency Assistance Fund mentioned in section 436 of this Act.

Saving and transitional provisions relating to amendments to Companies Act

526.—(1) Parts 3 to 12 and 22 do not apply to or in relation to the following, and despite section 451, the Companies Act as in force immediately before the appointed day continues to apply to or in relation to the following, as if Parts 3 to 12 and 22 and section 451 had not been enacted:

(*a*) any application made before the appointed day under section 210(1) or 211I of the Companies Act for the approval of the Court in relation to any compromise or arrangement;

(*b*) any application for an order under section 211B of the Companies Act made before the appointed day;

(*c*) any order for a winding up of a company made under section 216(2)(*f*) of the Companies Act before the appointed day;

(*d*) any appointment made before the appointed day of a receiver or manager of the property of a company or of the property in Singapore of any other corporation;

(*e*) any application made before the appointed day for a judicial management order under section 227B(1) of the Companies Act;

(*f*) any application made before the appointed day for the winding up of a company under section 253 of the Companies Act;

(*g*) any application made before the appointed day for the winding up of an unregistered company under section 351 of the Companies Act;

(*h*) any voluntary winding up that commences within the meaning of section 291(6) of the Companies Act before the appointed day;

(*i*) any liquidation or dissolution of a foreign company in its place of incorporation or origin in respect of which a notice under section 377(2)(*a*) of the Companies Act was lodged before the appointed day;

(*j*) any application made before the appointed day for recognition of a foreign proceeding under Article 15(1) of the Tenth Schedule to the Companies Act.

(2) For the purposes of subsection (1) —

(*a*) any person who was an approved liquidator immediately before the appointed day by virtue of section 9(1) or (2) of the Companies Act as in force immediately before the appointed day continues as an approved liquidator despite section 451(3) of this Act, and section 9 of the Companies Act as in force immediately before that date continues to apply to such person as if section 451(3) of this Act had not been enacted; and

(*b*) any reference in the Companies Act, as in force immediately before the appointed day, to "Official Receiver" is to be read as a reference to the Official Receiver appointed under section 17(1) of this Act.

(3) Section 237 does not apply to any default in the keeping of proper books of account by a company where any part of the period mentioned in that section, for which proper books of account are not kept by the company, falls before the appointed day, and despite section 451(29) and (41), section 339 of the Companies Act as in force immediately before the appointed day continues to apply to and in

relation to such default as if sections 237 and 451(29) and (41) of this Act had not been enacted.

(4) Despite section 451(29), the Companies Liquidation Account mentioned in section 322 of the Companies Act as in force immediately before the appointed day continues and is deemed to be the Companies Liquidation Account mentioned in section 197 of this Act.

(5) Any application for an order under section 343 of the Companies Act made before the appointed day is deemed to be an application made under section 208 of this Act.

(6) Any outstanding property, of a company that is dissolved, that is vested in the Official Receiver under section 346 of the Companies Act as in force immediately before the appointed day is deemed to be vested in the Official Receiver under section 213 of this Act.

(7) Section 440 does not apply to or in relation to a company in respect of which proceedings mentioned in that section are commenced before the appointed day.

(8) In this section, "appointed day" means the date Parts 3 to 12 and 22 and section 451 come into operation.

Other saving and transitional provisions

527.—(1) Despite anything in this Act, a person who is a qualified person may undertake the relevant work corresponding to the person's qualification —

(*a*) for a period of 6 months after the appointed day; and

(*b*) if, within the period in paragraph (*a*), the person applies for a licence under section 51, until the earlier of the following:

(i) the date on which the licensing officer grants the licence to the person;

(ii) the date on which the application is finally refused or withdrawn.

(2) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such

additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

(3) In this section —

"appointed day" means the day Division 3 of Part 3 comes into operation;

"qualified person" means —

(*a*) a person (each called in this subsection an approved liquidator) —

(i) belonging to a class of persons declared, under section 9(1) of the Companies Act as in force immediately before the appointed day, to be approved liquidators; or

(ii) who is approved as a liquidator under section 9(2) of the Companies Act as in force immediately before that day;

(*b*) a public accountant; or

(*c*) a solicitor;

"relevant work" means —

(*a*) in relation to a qualified person who is an approved liquidator, acting as a liquidator or provisional liquidator, or as a receiver or manager, under this Act;

(*b*) in relation to a qualified person who is a public accountant, acting as a judicial manager or interim judicial manager, a trustee of a bankrupt's estate or a nominee under a voluntary arrangement, under this Act; or

(*c*) in relation to a qualified person who is a solicitor, acting as a trustee of a bankrupt's estate or a nominee under a voluntary arrangement, under this Act.

FIRST SCHEDULE

Section 99(4)

POWERS OF JUDICIAL MANAGER

The judicial manager may exercise all or any of the following powers:

(*a*) power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to the judicial manager expedient;

(*b*) power to sell or otherwise dispose of the property of the company by public auction or private contract;

(*c*) power to borrow money and grant security for the borrowing over the property of the company;

(*d*) power to appoint a solicitor or accountant or other professionally qualified person to assist the judicial manager in the performance of the judicial manager's functions;

(*e*) power to bring or defend any action or other legal proceedings in the name and on behalf of the company;

(*f*) power to assign, in accordance with the regulations, the proceeds of an action arising under section 224, 225, 228, 238, 239 or 240;

(*g*) power to refer to arbitration any question affecting the company;

(*h*) power to effect and maintain insurances in respect of the business and property of the company;

(*i*) power to use the company's seal, if any;

(*j*) power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;

(*k*) power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;

(*l*) power to appoint any agent to do any business which the judicial manager is unable to do himself or herself or which can more conveniently be done by an agent and power to employ and dismiss employees;

(*m*) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company;

(*n*) power to make any payment which is necessary or incidental to the performance of the judicial manager's functions;

(*o*) power to carry on the business of the company;

FIRST SCHEDULE — *continued*

(*p*) power to establish subsidiaries of the company;

(*q*) power to transfer to subsidiaries of the company the whole or any part of the business and property of the company;

(*r*) power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company;

(*s*) power to make any arrangement or compromise on behalf of the company;

(*t*) power to call up any uncalled capital of the company;

(*u*) power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person;

(*v*) power to make or defend an application for the winding up of a company;

(*w*) power to do all other things incidental to the exercise of the foregoing powers.

SECOND SCHEDULE

Sections 230(4)(*a*), 373(4)(*a*) and 447

WRITTEN LAWS AND RELEVANT PERSONS MENTIONED IN SECTIONS 230(4) AND 373(4)

	First column *Written law*	*Second column* *Relevant person*
1.	Control of Vectors and Pesticides Act (Cap. 59)	Director-General of Public Health
2.	Environmental Protection and Management Act (Cap. 94A)	Director-General of Environmental Protection
3.	Environmental Public Health Act (Cap. 95)	Director-General of Public Health
4.	Hazardous Waste (Control of Export, Import and Transit) Act (Cap. 122A)	Director of Hazardous Waste

SECOND SCHEDULE — *continued*

First column	*Second column*
Written law	*Relevant person*
5. Radiation Protection Act (Cap. 262)	Director-General of Environmental Protection
6. Sewerage and Drainage Act (Cap. 294)	Public Utilities Board
7. Transboundary Haze Pollution Act 2014 (Act 24 of 2014)	Director-General of Environmental Protection

Note:

In this Schedule —

"Director of Hazardous Waste" means the Director of Hazardous Waste appointed under section 15 of the Hazardous Waste (Control of Export, Import and Transit) Act;

"Director-General of Environmental Protection" means the Director-General of Environmental Protection appointed under section 3(1) of the Environmental Protection and Management Act;

"Director-General of Public Health" means the Director-General of Public Health appointed under section 3(1) of the Environmental Public Health Act;

"Public Utilities Board" means the Public Utilities Board reconstituted and continued by section 3 of the Public Utilities Act.

THIRD SCHEDULE

Sections 252, 253 and 447

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

PREAMBLE

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of —

(*a*) cooperation between the courts and other competent authorities of Singapore and foreign States involved in cases of cross-border insolvency;

(*b*) greater legal certainty for trade and investment;

THIRD SCHEDULE — *continued*

(*c*) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(*d*) protection and maximisation of the value of the debtor's property; and

(*e*) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

CHAPTER 1

GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law applies where —

(*a*) assistance is sought in Singapore by a foreign court or a foreign representative in connection with a foreign proceeding;

(*b*) assistance is sought in a foreign State in connection with a proceeding under Singapore insolvency law;

(*c*) a foreign proceeding and a proceeding under Singapore insolvency law in respect of the same debtor are taking place concurrently; or

(*d*) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Singapore insolvency law.

2. This Law does not apply to any proceedings concerning such entities or classes of entities which the Minister may, by order in the *Gazette*, prescribe.

3. The Court must not grant any relief, or modify any relief already granted, or provide any cooperation or coordination, under or by virtue of any of the provisions of this Law if and to the extent that such relief or modified relief or cooperation or coordination would, in the case of a proceeding under Singapore insolvency law, be prohibited under or by virtue of —

(*a*) this Act;

(*b*) Part VII or section 61, 62 or 76A of the Banking Act;

(*c*) section 27(2) or 52(2) of the Deposit Insurance and Policy Owners' Protection Schemes Act;

(*d*) Part IIIAA of the Insurance Act;

(*e*) the International Interests in Aircraft Equipment Act;

THIRD SCHEDULE — *continued*

(*f*) Part IVA or IVB or section 178 of the Monetary Authority of Singapore Act;

(*g*) the Payment and Settlement Systems (Finality and Netting) Act;

(*h*) Division 4 of Part III, or Part IIIAA, of the Securities and Futures Act; or

(*i*) any other written law that the Minister may, by order in the *Gazette*, prescribe.

4. Where a foreign proceeding regarding a debtor, who is an insured under the provisions of a relevant Act (being the Third Parties (Rights against Insurers) Act or the Motor Vehicles (Third-Party Risks and Compensation) Act), is recognised under this Law, any stay and suspension mentioned in Article 20(1) and any relief granted by the Court under Article 19 or 21 does not apply to or affect —

(*a*) any transfer of rights of the debtor under that relevant Act; or

(*b*) any claim, action, cause or proceeding by a third party against an insurer under or in respect of rights of the debtor transferred under that relevant Act.

5. Any suspension under this Law of the right to transfer, encumber or otherwise dispose of any of the debtor's property —

(*a*) is subject to sections 46 and 47 of the Land Titles Act in relation to any estate or interest in land under the provisions of that Act; and

(*b*) in any other case, does not bind a purchaser of any estate or interest in land in good faith for money or money's worth unless the purchaser has express notice of the suspension.

6. In paragraph 5, "land" has the same meaning as in section 4(1) of the Land Titles Act.

Article 2. Definitions

For the purposes of this Law —

(*a*) "the Court", except as otherwise provided in Articles 14(4) and 23(6)(*b*), means the Court mentioned in Article 4(1);

(*b*) "chattel agreement" includes a conditional sale agreement, a chattels leasing agreement (as defined in section 88(1) of this Act) and a retention of title agreement (as defined in section 88(1) of this Act);

(*c*) "debtor" means a corporation;

THIRD SCHEDULE — *continued*

(*d*) "establishment" means any place where the debtor has property, or any place of operations where the debtor carries out a non-transitory economic activity with human means and property or services;

(*e*) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(*f*) "foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has its centre of main interests;

(*g*) "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;

(*h*) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

(*i*) "foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

(*j*) "security" means any mortgage, charge, pledge, lien or other security recognised by law;

(*k*) "Singapore insolvency law" means any of the following:

(i) sections 210 to 212 of the Companies Act;

(ii) Parts 5, 7, 8, 9, 10, 11 and 22 of this Act;

(iii) any subsidiary legislation made under any section of the Companies Act mentioned in sub-paragraph (i);

(iv) any subsidiary legislation made in relation to any Part of this Act mentioned in sub-paragraph (ii);

(v) the common law of Singapore relating to or in connection with the subject-matter of any section of the Companies Act mentioned in sub-paragraph (i) or any Part of this Act mentioned in sub-paragraph (ii), or the subject-matter of any subsidiary legislation mentioned in sub-paragraph (iii) or (iv);

THIRD SCHEDULE — *continued*

(*l*) "Singapore insolvency officeholder" means —

(i) the Official Receiver, when acting as a liquidator, a provisional liquidator or a scheme manager of a scheme of arrangement under Part 5 of this Act or Part VII of the Companies Act; or

(ii) a person acting as a liquidator, a provisional liquidator, a judicial manager, an interim judicial manager or a scheme manager of a scheme of arrangement under Part 5 of this Act or Part VII of the Companies Act;

(*m*) "State" means Singapore and any country other than Singapore;

(*n*) any reference to the law of Singapore includes a reference to the rules of private international law applicable in Singapore.

Article 3. International obligations of Singapore

To the extent that this Law conflicts with an obligation of Singapore arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

Article 4. Competent Court

1. The functions mentioned in this Law relating to recognition of foreign proceedings and cooperation with foreign courts are to be performed by the High Court in Singapore.

2. Subject to paragraph 1 of this Article, the Court has jurisdiction in relation to the functions mentioned in that paragraph if —

(*a*) the debtor —

(i) is or has been carrying on business within the meaning of section 366 of the Companies Act in Singapore; or

(ii) has property situated in Singapore; or

(*b*) the Court considers for any other reason that it is the appropriate forum to consider the question or provide the assistance requested.

Article 5. Authorisation of Singapore insolvency officeholders to act in a foreign State

1. A Singapore insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under Singapore insolvency law, as permitted by the applicable foreign law.

THIRD SCHEDULE — *continued*

2. The Court has the power to appoint any other person or persons to act in a foreign State on behalf of a proceeding under Singapore insolvency law, as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the Court from refusing to take an action governed by this Law, if the action would be contrary to the public policy of Singapore.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of a Court or a Singapore insolvency officeholder to provide additional assistance to a foreign representative under other laws of Singapore.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER 2

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN SINGAPORE

Article 9. Right of direct access

A foreign representative is entitled to apply directly to the Court in Singapore.

Article 10. Limited jurisdiction

The sole fact that an application under this Law is made to the Court in Singapore by a foreign representative does not subject the foreign representative or the foreign property and affairs of the debtor to the jurisdiction of the courts of Singapore for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under Singapore insolvency law

A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under Singapore insolvency law if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under Singapore insolvency law

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under Singapore insolvency law.

Article 13. Access of foreign creditors to a proceeding under Singapore insolvency law

1. Subject to paragraph 2 of this Article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under Singapore insolvency law as creditors in Singapore.

2. Paragraph 1 of this Article does not affect the ranking of claims in a proceeding under Singapore insolvency law, or the exclusion of foreign tax claims, social security claims or claims for employees' superannuation or provident funds or under any scheme of superannuation (collectively, "tax and social security obligations") from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations are not to be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.

Article 14. Notification to foreign creditors of a proceeding under Singapore insolvency law

1. Whenever under Singapore insolvency law notification is to be given to creditors in Singapore, such notification must also be given to the known creditors who do not have addresses in Singapore. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. The notification under paragraph 1 of this Article must be made to the foreign creditors individually, unless —

(*a*) the Court considers that under the circumstances some other form of notification would be more appropriate; or

(*b*) the notification to creditors in Singapore is to be by advertisement only, in which case the notification to the known foreign creditors may be by advertisement in such foreign newspapers as the Singapore insolvency officeholder considers most appropriate for ensuring that the content of the notification comes to the notice of the known foreign creditors.

3. When notification of a right to file a claim is to be given to foreign creditors, the notification must —

THIRD SCHEDULE — *continued*

(*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 under the law of Singapore and the orders of the Court.

4. In this Article, "the Court" means the Court which has jurisdiction in relation to the particular proceeding under Singapore insolvency law under which notification is to be given to creditors.

CHAPTER 3

RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

1. A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

2. An application for recognition must be accompanied by —

(*a*) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

(*b*) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(*c*) in the absence of evidence mentioned in sub-paragraphs (*a*) and (*b*), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

3. An application for recognition must also be accompanied by a statement identifying all foreign proceedings and proceedings under Singapore insolvency law in respect of the debtor that are known to the foreign representative.

4. The foreign representative must provide the Court with a translation into English of documents supplied in support of the application for recognition.

Article 16. Presumptions concerning recognition

1. If the decision or certificate mentioned in Article 15(2) indicates that the proceeding in respect of which an application for recognition is made is a foreign proceeding within the meaning of Article 2(*h*) and that the person or body making that application is a foreign representative within the meaning of Article 2(*i*), the Court is entitled to so presume.

2. The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

3. In the absence of proof to the contrary, the debtor's registered office is presumed to be the debtor's centre of main interests.

Article 17. Decision to recognise a foreign proceeding

1. Subject to Article 6, a proceeding must be recognised if —

(*a*) it is a foreign proceeding within the meaning of Article 2(*h*);

(*b*) the person or body applying for recognition is a foreign representative within the meaning of Article 2(*i*);

(*c*) the application meets the requirements of Article 15(2) and (3); and

(*d*) the application has been submitted to the Court mentioned in Article 4.

2. The foreign proceeding must be recognised —

(*a*) as a foreign main proceeding if it is taking place in the State where the debtor has its centre of main interests; or

(*b*) as a foreign non-main proceeding, if the debtor has an establishment within the meaning of Article 2(*d*) in the foreign State.

3. An application for recognition of a foreign proceeding must be decided upon at the earliest possible time.

4. The provisions of Articles 15 to 16, this Article and Article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist; and in such a case, the Court may, on the application of the foreign representative or a person affected by the recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative must inform the Court promptly of —

(*a*) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(*b*) any other foreign proceeding or proceeding under Singapore insolvency law regarding the same debtor that becomes known to the foreign representative.

THIRD SCHEDULE — *continued*

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

1. From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the property of the debtor or the interests of the creditors, grant relief of a provisional nature, including —

(*a*) staying execution against the debtor's property;

(*b*) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court, in order to protect and preserve the value of property that, by its nature or because of other circumstances, is perishable, susceptible to devaluation or otherwise in jeopardy; and

(*c*) any relief mentioned in Article 21(1)(*c*), (*d*) or (*g*).

2. Unless extended under Article 21(1)(*f*), the relief granted under this Article terminates when the application for recognition is decided upon.

3. The Court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

1. Upon recognition of a foreign proceeding that is a foreign main proceeding, subject to paragraph 2 of this Article —

(*a*) commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities is stayed;

(*b*) execution against the debtor's property is stayed; and

(*c*) the right to transfer, encumber or otherwise dispose of any property of the debtor is suspended.

2. The stay and suspension mentioned in paragraph 1 of this Article are —

(*a*) the same in scope and effect as if the debtor had been made the subject of a winding up order under this Act; and

(*b*) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Singapore in such a case,

and the provisions of paragraph 1 of this Article are to be interpreted accordingly.

3. Without prejudice to paragraph 2 of this Article, the stay and suspension mentioned in paragraph 1 of this Article do not affect any right —

(*a*) to take any steps to enforce security over the debtor's property;

(*b*) to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement (as defined in section 88(1) of this Act);

(*c*) exercisable under or by virtue of or in connection with any written law mentioned in Article 1(3)(*a*) to (*i*); or

(*d*) of a creditor to set off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor had been made the subject of a winding up order under this Act.

4. Paragraph 1(*a*) of this Article does not affect the right to —

(*a*) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or

(*b*) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

5. Paragraph 1 of this Article does not affect the right to request or otherwise initiate the commencement of a proceeding under Singapore insolvency law or the right to file claims in such a proceeding.

6. In addition to and without prejudice to any powers of the Court under or by virtue of paragraph 2 of this Article, the Court may, on the application of the foreign representative or a person affected by the stay and suspension mentioned in paragraph 1 of this Article, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, where necessary to protect the property 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 property, rights, obligations or liabilities, to the extent they have not been stayed under Article 20(1)(*a*);

(*b*) staying execution against the debtor's property to the extent it has not been stayed under Article 20(1)(*b*);

THIRD SCHEDULE — *continued*

(*c*) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor to the extent this right has not been suspended under Article 20(1)(*c*);

(*d*) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, rights, obligations or liabilities;

(*e*) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court;

(*f*) extending relief granted under Article 19(1); and

(*g*) granting any additional relief that may be available to a Singapore insolvency officeholder, including any relief provided under section 96(4) of this Act.

2. Upon recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Singapore 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 property that, under the law of Singapore, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

4. No stay under paragraph 1(*a*) of this Article affects the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

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 or Article 20(6), the Court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements (as defined in section 88(1) of this Act)) and other interested persons, including if appropriate the debtor, are adequately protected.

2. The Court may subject relief granted under Article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions.

3. The Court may, at the request of the foreign representative or a person affected by relief granted under Article 19 or 21, or of its own motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to creditors

1. Subject to paragraphs 6 and 9 of this Article, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the Court for an order under or in connection with sections 130, 205, 224, 225, 228, 229, 238, 239, 240 and 438 of this Act and section 131(1) of the Companies Act.

2. Where the foreign representative makes such an application under paragraph 1 of this Article ("an Article 23 application"), the provisions of this Act and the Companies Act mentioned in paragraph 1 of this Article apply —

(*a*) whether or not the debtor is being wound up or is in judicial management or undergoing a scheme of arrangement, under Singapore insolvency law; and

(*b*) with the modifications set out in paragraph 3 of this Article.

3. The modifications mentioned in paragraph 2 of this Article are as follows:

(*a*) for the purposes of section 130 of this Act, the date which corresponds with the commencement of the winding up is the date of the opening of the relevant foreign proceeding;

(*b*) for the purposes of section 224 or 225 read with section 226(1) and (4) of this Act —

(i) the date which corresponds with the commencement of the judicial management or winding up is the date of the opening of the relevant foreign proceeding;

(ii) the date which corresponds with the date the company enters judicial management is the date of the appointment of the equivalent of a judicial manager in the relevant foreign proceeding; and

(iii) section 226(5) and (6) of this Act does not apply;

(*c*) for the purposes of section 224 or 225 read with section 227(4) of this Act, a person has notice of the relevant proceedings if the person has notice of the opening of the relevant foreign proceeding;

(*d*) for the purposes of section 228 or 240 of this Act, the date which corresponds with the commencement of the judicial management or winding up is the date of the opening of the relevant foreign proceeding;

THIRD SCHEDULE — *continued*

(*e*) for the purposes of section 229 of this Act —

(i) the date which corresponds with the commencement of the judicial management or winding up is the date of the opening of the relevant foreign proceeding;

(ii) the date which corresponds with the date the company enters judicial management is the date of the appointment of the equivalent of a judicial manager in the relevant foreign proceeding; and

(iii) section 229(5) and (6) of this Act does not apply.

4. For the purposes of paragraph 3 of this Article, the date of the opening of the foreign proceeding is to be determined in accordance with the law of the State in which the foreign proceeding is taking place, including any rule of law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.

5. When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the Article 23 application relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding.

6. At any time when a proceeding under Singapore insolvency law is taking place regarding the debtor —

(*a*) the foreign representative must not make an Article 23 application except with the permission of the Court; and

(*b*) references to "the Court" in paragraphs 1, 5 and 7 of this Article are references to the Court in which that proceeding is taking place.

7. On making an order on an Article 23 application, the Court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Singapore are adequately protected.

8. Nothing in this Article affects the right of a Singapore insolvency officeholder to make an application under or in connection with any of the provisions mentioned in paragraph 1 of this Article.

9. Nothing in paragraph 1 of this Article applies in respect of any preference given, floating charge created, alienation, assignment made or other transaction entered into before the date on which this Law comes into force.

THIRD SCHEDULE — *continued*

Article 24. Intervention by a foreign representative in proceedings in Singapore

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Singapore are met, intervene in any proceedings in which the debtor is a party.

CHAPTER 4

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a Court of Singapore and foreign courts or foreign representatives

1. In matters mentioned in Article 1(1), the Court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Singapore insolvency officeholder.

2. The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the Singapore insolvency officeholder and foreign courts or foreign representatives

1. In matters mentioned in Article 1(1), a Singapore insolvency officeholder must to the extent consistent with the Singapore insolvency officeholder's other duties under the law of Singapore, in the exercise of the Singapore insolvency officeholder's functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The Singapore insolvency officeholder is entitled, in the exercise of the Singapore insolvency officeholder's functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation mentioned in Articles 25 and 26 may be implemented by any appropriate means, including —

(*a*) appointment of a person to act at the direction of the Court;

(*b*) communication of information by any means considered appropriate by the Court;

(*c*) coordination of the administration and supervision of the debtor's property and affairs;

THIRD SCHEDULE — *continued*

(*d*) approval or implementation by courts of agreements concerning the coordination of proceedings; and

(*e*) coordination of concurrent proceedings regarding the same debtor.

CHAPTER 5

CONCURRENT PROCEEDINGS

Article 28. Commencement or continuation of a proceeding under Singapore insolvency law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, the effects of a proceeding under Singapore insolvency law in relation to the same debtor are to, insofar as the property of that debtor is concerned, be restricted to property that is located in Singapore and, to the extent necessary to implement cooperation and coordination under Articles 25, 26 and 27, to other property of the debtor that, under the law of Singapore, should be administered in that proceeding.

Article 29. Coordination of a proceeding under Singapore insolvency law and a foreign proceeding

Where a foreign proceeding and a proceeding under Singapore insolvency law are taking place concurrently regarding the same debtor, the Court may seek cooperation and coordination under Articles 25, 26 and 27, and the following apply:

(*a*) when the proceeding in Singapore is taking place at the time the application for recognition of the foreign proceeding is filed —

(i) any relief granted under Article 19 or 21 must be consistent with the proceeding in Singapore; and

(ii) if the foreign proceeding is recognised in Singapore as a foreign main proceeding, Article 20 does not apply;

(*b*) when the proceeding in Singapore commences after the filing of the application for recognition of the foreign proceeding —

(i) any relief in effect under Article 19 or 21 must be reviewed by the Court and must be modified or terminated if inconsistent with the proceeding in Singapore;

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension mentioned in Article 20(1) must be modified or terminated under Article 20(6), if inconsistent with the proceeding in Singapore; and

(iii) any proceedings brought by the foreign representative by virtue of Article 23(1) before the proceeding in Singapore commenced must be reviewed by the Court and the Court may give such directions as it thinks fit regarding the continuance of those proceedings; and

(*c*) in granting, extending or modifying relief granted to a foreign representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding

In matters mentioned in Article 1(1), in respect of more than one foreign proceeding regarding the same debtor, the Court may seek cooperation and coordination under Articles 25, 26 and 27, and the following are to apply:

(*a*) any relief granted under Article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(*b*) if a foreign main proceeding is recognised after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under Article 19 or 21 must be reviewed by the Court and must 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 is to grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under Singapore insolvency law, proof that the debtor is unable to pay its debts within the meaning given to the expression under Singapore insolvency law.

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 under a law relating to insolvency in a foreign State may not receive a payment for the same claim in a

THIRD SCHEDULE — *continued*

proceeding under Singapore insolvency law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.