TURKS AND CAICOS ISLANDS

CHAPTER 16.18

INSOLVENCY ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 March 2021

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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CHAPTER 16.18

INSOLVENCY ORDINANCE

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CHAPTER 16.18

INSOLVENCY ORDINANCE

(Ordinance 20 of 2017)

AN ORDINANCE TO REFORM THE LAW RELATING TO THE LIQUIDATION OF COMPANIES AND FOREIGN COMPANIES AND TO PROVIDE FOR THE ADMINISTRATION, RECEIVERSHIP AND LIQUIDATION OF COMPANIES AND THE BANKRUPTCY OF INDIVIDUALS, TO ENABLE COMPANIES AND INDIVIDUALS TO ENTER INTO ARRANGEMENTS AND AGREEMENTS WITH THEIR CREDITORS, TO PROVIDE FOR THE LICENSING OF INSOLVENCY PRACTITIONERS AND TO PROVIDE REDRESS FOR MALPRACTICE IN RELATION TO INSOLVENT PERSONS, FOR THE AVOIDANCE OF CERTAIN TRANSACTIONS, CROSS–BORDER INSOLVENCY AND CONNECTED ISSUES.

Commencement

[1 January 2019]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Insolvency Ordinance.

Interpretation

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

"administration order" means an order appointing an administrator of a company made under section 68(1);

"administrative receiver" has the meaning specified in section 136(1);

"administrator" means the person appointed as the administrator of a company in administration;

"admissible claim" has the meaning specified in section 146;

"admitted claim" means a claim admitted by a liquidator or a trustee in bankruptcy;

"approved form" means a form approved by the Commission under section 479;

"articles" has the meaning specified in the Companies Ordinance;

"asset" includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"bankrupt" means an individual against whom a bankruptcy order is made under Part XII;

"bankruptcy offence" means an offence under Part XIII**;**

"bankruptcy order" has the meaning specified in section 329;

"bankruptcy trustee" means the person appointed by the Court to be the trustee of the assets of a bankrupt;

"bankrupt's estate" has the meaning specified in section 348;

"charge" includes a mortgage, charge and a floating charge, whether crystallised or not;

"chargee" means the holder of a charge and includes a person in whose favour a charge is to be given or executed under an agreement, whether on demand or otherwise;

"Commission" means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance;

"company" means a company incorporated or continued under the Companies Ordinance, and excludes a foreign company and an unregistered company;

"company arrangement" has the meaning specified in section 23(1);

"connected entity" means a company, body corporate or other association of persons that, in relation to another company, body corporate or other association of persons is a connected person;

"connected person" has the meaning specified in the Insolvency Rules;

"Court" means the Supreme Court;

"Court Rules" means the Rules of Court made under section 16 of the Supreme Court Ordinance and includes any special or general orders issued by the Chief Justice under section 17 of that Ordinance;

"creditor" has the meaning specified in section 4(1);

"creditors' committee" means a committee established under section 458;

"director", in relation to a company, a foreign company and any other body corporate, includes—

(a) a person who is a member of the governing body of the company, foreign company or body corporate; and

(b) a person who, in relation to the company, foreign company or body corporate, occupies or acts in the position of director, by whatever name called;

"directors" is to be construed in accordance with subsection (2);

"document" means a document in any form and includes—

(a) any writing or printing on any material;

(b) information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;

(c) a book, graph or drawing; and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

"eligible insolvency practitioner" means an insolvency practitioner who is eligible to act in relation to a company, an unregistered company, a partnership or individual in accordance with section 19;

"floating charge" means a charge created by a company which is or, as created, was a floating charge;

"foreign company" means a body corporate that is incorporated, registered or formed outside the Islands and includes a foreign company registered under Part XVI of the Companies Ordinance;

"foreign insolvency practitioner" means an individual who—

(a) is resident outside the Islands; and

(b) not being a licensed insolvency practitioner, is appointed to act as an insolvency practitioner in accordance with the Insolvency Practitioners Regulations;

"group" and "group company" have the meaning specified in the Companies Ordinance, with the substitution of "body corporate" for "company;

"insolvency practitioner" means a person acting in a capacity specified in section 11(1);

"Insolvency Practitioners Code" means the Code issued under section 21;

"Insolvency Practitioners Regulations" means the Regulations made under section 20;

"insolvency proceeding" means any proceeding under the Ordinance or the Insolvency Rules, including a company arrangement and a personal insolvency agreement;

"Insolvency Rules" means the Rules made under section 478;

"insolvent" has the meaning specified—

(a) in relation to a company, in section 5(1); and

(b) in relation to an individual, in section 5(2);

"interim supervisor" means the person appointed as the interim supervisor under a proposal for a company arrangement or a personal insolvency agreement;

"judgment rate" has the meaning specified in the Insolvency Rules;

"liability" has the meaning specified in section 3;

"licensed insolvency practitioner" means a person holding a licence to act as an insolvency practitioner issued under section 13;

"licensee" has the meaning specified in the Financial Services Commission Ordinance;

"liquidator", in relation to a company means a liquidator appointed under section 159 or section 170, as the case may be;

"member", in relation to a company, has the meaning specified in the Companies Ordinance;

"moratorium period", in relation to the administration of a company, has the meaning specified in section 74(1) or (3);

"nominee" means—

(a) in the case of a company arrangement, the person nominated as the interim supervisor under a proposal—

(i) by the directors of a company; or

(ii) if a company is in administration or liquidation, by the administrator or liquidator of the company; and

(b) in the case of a personal insolvency agreement, the person nominated as the interim supervisor under a proposal by the debtor;

"officer", in relation to a body corporate, includes a director or secretary of the body corporate, but does not include an administrator, liquidator, receiver, supervisor or interim supervisor;

"Official Assignee" means the Official Assignee appointed under section 8;

"onerous property", for the purposes of the provisions of this Ordinance on disclaimer, means—

(a) an unprofitable contract; or

(b) assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act;

"parent", in relation to a body corporate, has the meaning specified in the Companies Ordinance with the substitution of "body corporate" for "company";

"personal insolvency agreement" has the meaning specified in section 294(1);

"preferential debt" means a debt of a type prescribed as a preferential debt;

"preferential claim" means a claim in respect of a preferential debt;

"preferential creditor", in relation to a preferential debt, means the creditor who has a claim in relation to that debt;

"prescribed" means, except if otherwise specified, prescribed by the Insolvency Rules;

"prescribed priority" means—

(a) in a liquidation, the prescribed priority for the payment of the costs and expenses of a liquidation; and

(b) in a bankruptcy, the prescribed priority for the payment of the costs and expenses of a bankruptcy;

"proposal" in relation to a company arrangement or a personal insolvency agreement, means a proposal for a company arrangement or a personal insolvency agreement;

"proposal period" means the period from the appointment of the interim supervisor to the approval or rejection by the creditors of the proposal;

"public document" has the meaning specified in section 7;

"qualifying resolution", in relation to a company, means a resolution passed at a properly constituted meeting of the company by a majority of 75%, or if a higher majority is required by the articles, by that higher majority, of the votes of those members who are present at the meeting and entitled to vote on the resolution;

"receiver" means the receiver of the whole or any part of the assets of a company and includes—

(a) a manager and a receiver and manager;

(b) a receiver of income; and

(c) an administrative receiver;

"receiver appointed out of court" means a receiver appointed—

(a) in the exercise of a power conferred by a debenture or other instrument; or

(b) in the exercise of a power which, by virtue of any law, is implied in and has effect as if contained in an instrument;

"Register of Companies" means the Register of Companies maintained by the Registrar under the Companies Ordinance;

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

"relevant person" has the meaning specified in section 241;

"relevant time" means—

(a) in the case of an administration that is not immediately preceded by a liquidation, the commencement of the administration;

(b) in the case of an administration that is immediately preceded by a liquidation, the commencement of the preceding liquidation;

(c) in the case of a liquidation that is not immediately preceded by an administration, the commencement of the liquidation;

(d) in the case of a liquidation that is immediately preceded by an administration, the commencement of the preceding administration; and

(e) in the case of a bankruptcy, the commencement of the bankruptcy;

"restricted person" means a person—

(a) against whom a bankruptcy restrictions order or an interim order has effect; or

(b) in respect of whom a bankruptcy restrictions undertaking is in place;

"retention of title agreement" means an agreement for the sale of goods under which the seller retains title to the goods until the price has been paid in full, but excludes an agreement which constitutes a charge on the goods;

"secured creditor" has the meaning specified in section 4(2);

"security interest" means a mortgage, charge, lien or other security;

"statement of affairs" means a statement of the affairs of a company complying with section 246;

"statement of assets and liabilities" means a statement of assets and liabilities of an individual complying with section 405;

"statutory demand" means a demand made under section 155(1);

"subsidiary", in relation to a body corporate, has the meaning specified in the Companies Ordinance with the substitution of "body corporate" for "company";

"supervisor" means the person appointed to act as the supervisor of a company arrangement or a personal insolvency agreement;

"unauthorised financial services business" has the meaning specified in the Financial Services Commission Ordinance;

"unregistered company" means—

(a) a body corporate that is not a company within the meaning of this section and includes a foreign company; or

(b) any association of persons;

"unsecured creditor" has the meaning specified in section 4(3);

"voluntary liquidator" means a liquidator appointed under Part XV of the Companies Ordinance and, unless the context otherwise requires, includes two or more joint voluntary liquidators but does not include a liquidator appointed under this Ordinance;

"wages or salary" includes—

(a) a sum payable in respect of a period of holiday, the sum being treated as relating to the period by reference to which the entitlement to holiday accrued;

(b) a sum payable in respect of a period of absence through illness or other good cause;

(c) a sum payable in lieu of holiday;

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of any law concerning social security; and

(e) a contribution to an occupational pension scheme.

(2) A reference to a decision taken or to be taken or a thing done or to be done by "the directors" of a company, foreign company or other body corporate, means that decision taken or thing done—

(a) if the company, foreign company or other body corporate only has one director, by that director; or

(b) in any other case, by a majority of the directors.

Meaning of "liability"

3. (1) Subject to subsection (3), "liability" means a liability to pay money or money's worth, including a liability under a law, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution.

(2) A liability may be present or prospective, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Ordinance, an illegal or unenforceable liability is deemed not to be a liability.

Creditors, secured creditors and unsecured creditors

4. (1) A person is a creditor of another person (the debtor) if the person has a claim against the debtor, whether by assignment or otherwise, that is or would be an admissible claim in—

(a) the liquidation of the debtor, in the case of a debtor that is a company or an unregistered company; or

(b) the bankruptcy of the debtor, in the case of a debtor who is an individual.

(2) A secured creditor is a person who holds a security interest over an asset of the debtor in respect of a liability of the debtor to the creditor.

(3) An unsecured creditor is a creditor who is not a secured creditor.

Meaning of "insolvent"

5. (1) A company—

(a) is presumed to be insolvent if—

(i) it fails to comply with the requirements of a statutory demand that has not been set aside under section 157; or

(ii) execution or other process issued on a judgment, decree or order of a court in the Islands in favour of a creditor of the company is returned wholly or partly unsatisfied; and

(b) is insolvent if—

(i) it is unable to pay its debts as they fall due; or

(ii) the value of its liabilities exceeds its assets.

(2) An individual—

(a) is presumed to be insolvent if—

(i) he fails to comply with the requirements of a statutory demand that has not been set aside under section 157; or

(ii) execution or other process issued on a judgment, decree or order of a court in the Islands in favour of a creditor of the individual is returned wholly or partly unsatisfied; and

(b) is insolvent if he is unable to pay his debts as they fall due.

Companies and individuals subject to insolvency proceedings

6. (1) A company is—

(a) "in administration" during the period from the commencement of the administration of the company, as defined in section 58, to its termination;

(b) "in receivership" during the period when a receiver is appointed in respect of any of its assets;

(c) "in administrative receivership" during the period when an administrative receiver is appointed in respect of the company; and

(d) "in liquidation" during the period from the commencement of the liquidation of the company to its termination.

(2) An individual is "in bankruptcy" during the period from the date that a bankruptcy order is made against the individual until his discharge under section 414 or 417.

Public documents

7. (1) Subject to subsection (3), a "public document", in relation to a person, means a document of, or purporting to be issued, published or signed by or on behalf of the person that—

(a) in the case of a company or unregistered company, is required or permitted to be filed with the Registrar under—

(i) this Ordinance or the Insolvency Rules;

(ii) the Companies Ordinance; or

(iii) any other law;

(b) is issued, published or signed under, or for the purposes of this Ordinance, the Insolvency Rules or any regulations made under this Ordinance or any other law; or

(c) is issued or signed in the course of, or for the purposes of, a particular transaction or dealing.

(2) Without limiting subsection (1), "public document" includes a business letter, statement of account, invoice, receipt, order for goods or services or an official notice of, or purporting to be issued, published or signed by, or on behalf of, the person.

(3) A document is not a public document if it is applied, or intended or required to be applied, to goods or to any container, package or wrapping within which goods are, or are intended to be, supplied for a purpose connected with the supply of those goods.

PART II

OFFICIAL ASSIGNEE AND INSOLVENCY PRACTITIONERS

Official Assignee

Appointment of Official Assignee and Assistant Official Assignees

8. (1) The Commission—

(a) shall appoint a suitably experienced or qualified and fit and proper person to be Official Assignee; and

(b) may appoint one or more Assistant Official Assignees,

on such terms and conditions as the Commission considers appropriate.

(2) The Official Assignee is an employee of the Commission.

(3) The Commission shall provide the Official Assignee with such staff and resources as it considers appropriate for the performance by the Official Assignee of his functions under this Ordinance and the Insolvency Rules.

(3) Subject to the control of the Official Assignee, an Assistant Official Assignee has and may exercise the powers, duties and functions of the Official Assignee and the fact that an Assistant Official Assignee exercises those powers, duties and functions is conclusive evidence of his authority to do so.

Functions of Official Assignee

9. (1) The Official Assignee has the duties, powers and functions imposed or conferred on him by this Ordinance and any other law and the Insolvency Rules.

(2) Any assets vested in the Official Assignee in his official capacity shall, on the Official Assignee dying or otherwise ceasing to hold office, vest in his successor without any conveyance, assignment or transfer.

(3) For the purposes of the performance of his functions under this Ordinance and the Insolvency Rules, the Official Assignee is an officer of the Court and—

(a) may apply to the Court for directions in connection with his functions; and

(b) shall comply with any directions given to him by the Court.

(4) The Official Assignee has a right of audience in insolvency proceedings before the Court.

Application of this Ordinance to Official Assignee

10. Subject to any provision in this Ordinance or the Insolvency Rules to the contrary—

(a) a reference to the liquidator, provisional liquidator, receiver, interim receiver or bankruptcy trustee includes the Official Assignee when acting in that capacity; and

(b) if the Official Assignee acts in a capacity referred to in paragraph *(a)*, the provisions of this Ordinance that apply to a person acting in that capacity also apply to the Official Assignee, except as otherwise provided.

Licensing of insolvency practitioners

Prohibition on acting as insolvency practitioner without a licence

11. (1) For the purposes of this Ordinance, a person acts as an insolvency practitioner by acting as—

(a) the supervisor or interim supervisor of a company arrangement or a personal insolvency agreement;

(b) the administrator or administrative receiver of a company;

(c) the liquidator or provisional liquidator of a company or an unregistered company;

(d) the interim supervisor under a proposal for a company arrangement or a personal insolvency agreement;

(e) the interim receiver of an individual; or

(f) the bankruptcy trustee of an individual.

(2) Subject to subsection (3), no person shall act as an insolvency practitioner unless the person holds a licence.

(3) Subsection (2) does not apply—

(a) to the Official Assignee; or

(b) to a foreign insolvency practitioner while acting jointly with a licensed insolvency practitioner or with the Official Assignee in accordance with, and as may be permitted by, this Ordinance and the Insolvency Practitioners Regulations.

(4) A person who contravenes subsection (2) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Application for licence

12. (1) An individual resident in the Islands may apply to the Commission for a licence to act as an insolvency practitioner.

(2) An application under subsection (1) shall—

(a) contain the information specified in the Insolvency Practitioners Code; and

(b) be accompanied by the documentation specified in the Insolvency Practitioners Code.

(3) The Commission may require an applicant for a licence to provide it with such other information and documentation as it considers necessary to determine the application.

(4) An individual is disqualified from holding a licence if—

(a) he is a bankrupt; or

(b) he is a disqualified person within the meaning of section 280(4) or a restricted person.

Issue of licence

13. (1) The Commission may issue a licence to the applicant if it is satisfied—

(a) that the applicant—

(i) is an individual resident in the Islands who is fit and proper and qualified to act as an insolvency practitioner;

(ii) satisfies the requirements of this Ordinance in respect of the application and will, upon issuance of the licence, be in compliance with this Ordinance and the Insolvency Practitioners Regulations; and

(iii) is not disqualified from holding a licence under section 12(4); and

(b) that issuing the licence is not against the public interest.

(2) The Commission shall, within fourteen days of determining an application, give written notice of its decision to the applicant.

(3) A licence may be issued under subsection (1) subject to such terms and conditions as the Commission considers appropriate.

(4) If the Commission refuses to issue a licence to an applicant, the decision notice shall contain, or be accompanied by, a statement of the Commission's reasons for the refusal.

(5) The Commission may, upon giving reasonable notice to a licensed insolvency practitioner—

(a) vary or cancel any terms or conditions imposed under subsection (1); or

(b) impose new terms or conditions.

(6) The Commission shall publish the issuance of a licence under this section in the *Gazette*.

Supervision and enforcement

Production of accounts and records

14. (1) The Commission may, at any time during or after the completion of an insolvency proceeding, require a licensed insolvency practitioner appointed in respect of the proceeding to produce for inspection, at such place as it may specify—

(a) the licensed insolvency practitioner's records and accounts in respect of the proceeding; and

(b) any reports that the licensed insolvency practitioner has prepared in respect of the proceeding.

(2) The Commission may cause the accounts and records produced to it under subsection (1) to be audited.

(3) The licensed insolvency practitioner shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

(4) A licensed insolvency practitioner who contravenes this section commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Suspension and revocation of licence

15. (1) The Commission shall suspend or revoke the licence of a licensed insolvency practitioner if—

(a) in the opinion of the Commission, the licensed insolvency practitioner is no longer a fit and proper person to hold a licence;

(b) the licensed insolvency practitioner—

(i) is disqualified from holding a licence under section 12(4); or

(ii) is no longer resident in the Islands.

(2) The Commission may suspend or revoke the licence of a licensed insolvency practitioner if the licensed insolvency practitioner—

(a) is in breach of any condition of his licence;

(b) has failed to comply with his obligations under this Ordinance, the Insolvency Practitioners Regulations or the Insolvency Practitioners Code;

(c) has provided the Commission with any false, inaccurate or misleading information, whether on making an application for a licence or subsequent to the issue of the licence;

(d) has committed an offence under this Ordinance;

(e) has failed to pay the prescribed annual fee within six weeks of the date upon which it fell due for payment; or

(f) fails to comply with a directive issued by the Commission under section 17.

(3) The Commission may revoke the licence of a licensed insolvency practitioner if requested to do so by the licensed insolvency practitioner.

(4) Subject to subsection (5), the period of suspension of a licence under subsection (1) shall not exceed thirty days.

(5) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding thirty days each.

(6) Before suspending or revoking a licence under subsections (1) or (2), the Commission shall give written notice to the licensed insolvency practitioner stating—

(a) the grounds upon which it intends to revoke or suspend the licence; and

(b) that unless the licensed insolvency practitioner, by written notice filed with the Commission, shows good reason why his licence should not be revoked or suspended, the licence will be revoked or suspended, as the case may be, on a date not less than fourteen days after the date of the notice.

(7) If the Commission revokes or suspends a licence under this section, it shall—

(a) send a written notice to the licensed insolvency practitioner stating—

(i) that the licence has been revoked or suspended, as the case may be; and

(ii) the grounds upon which and the date from which the licence has been revoked or suspended;

(b) cause notice of the revocation or suspension to be published in the *Gazette*.

Right to make representations

16. (1) A licensed insolvency practitioner who receives a notice given under section 15(6) may, within fourteen days of the date of the notice, make written representations to the Commission.

(2) The Commission shall consider the representations made to it under subsection (1) in determining whether to suspend or revoke the licence.

Directives

17. If a licensed insolvency practitioner has contravened, or is in contravention of, this Ordinance, the Insolvency Practitioners Regulations or the Insolvency Practitioners Code, the Commission may issue one or more of the following directives—

(a) that the licensed insolvency practitioner shall take all necessary steps to resign as an insolvency practitioner in respect of certain specified insolvency matters or specified types or descriptions of insolvency matters;

(b) that the licensed insolvency practitioner shall not accept any new appointments as an insolvency practitioner or any new appointments of a specified type or description;

(c) that the licensed insolvency practitioner shall take such other action as the Commission considers may be necessary to ensure that he properly fulfils his duties as an insolvency practitioner either generally or in respect of particular insolvency matters.

Filing of returns and other documents

18. A licensed insolvency practitioner shall file with the Commission such returns and other documents as may be specified in the Insolvency Practitioners Regulations.

Eligibility to act

Eligible insolvency practitioner

19. (1) A person is not eligible to act as an insolvency practitioner in relation to a company or an individual unless the person—

(a) is a licensed insolvency practitioner;

(b) has given his written consent to act;

(c) is not disqualified from holding a licence under section 12(4); and

(d) is not disqualified from acting—

(i) in the case of a company, under subsection (2); or

(ii) in the case of an individual, under subsection (3).

(2) A person is disqualified from acting as an insolvency practitioner in respect of a company if the person is, or at any time in the previous three years has been—

(a) the auditor of the company or an employee of an auditor of the company; or

(b) a director of the company.

(3) An insolvency practitioner is disqualified from acting as an insolvency practitioner in respect of an individual if the person is a connected person in relation to the individual.

(4) A licensed insolvency practitioner shall not act as insolvency practitioner unless he is in compliance with the security requirements specified in the Insolvency Practitioners Regulations.

Regulation of insolvency practitioners

Insolvency Practitioners Regulations

20. (1) The Governor may make Regulations generally for giving effect to this Part and specifically in respect of—

(a) the inspection by the Commission of the records of a licensed insolvency practitioner;

(b) the submission to the Commission of complaints and the procedures for dealing with such complaints;

(c) fees payable on application for a licence and by licensed insolvency practitioners generally;

(d) matters that shall be, or may be, provided for in the Insolvency Practitioners Code; and

(e) any other matter required or permitted by this Part to be specified in the Regulations.

(2) The Insolvency Practitioners Regulations—

(a) may make different provision in relation to different persons, circumstances or cases; and

(b) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Insolvency Practitioners Regulations.

(3) The Insolvency Rules may make provision disapplying or modifying the application of this Part to foreign insolvency practitioners.

(4) The Insolvency Practitioners Regulations, and any amendment to the Regulations, shall be published in the *Gazette*.

Insolvency Practitioners Code

21. (1) Subject to subsections (2) and (3), the Commission may, by publication in the *Gazette*, issue a Code specifying requirements, not inconsistent with this Ordinance, the Insolvency Practitioners Regulations or the Insolvency Rules, relating to the licensing of insolvency practitioners and the carrying on by licensed insolvency practitioners of their business.

(2) Without limiting subsection (1), the Insolvency Practitioners Code may specify or provide for—

(a) the criteria that will be used in assessing applications for a licence, including the criteria for determining whether or not an individual is to be regarded as being resident in the Islands;

(b) the minimum security, including insurance cover, to be maintained by a licensed insolvency practitioner;

(c) the records to be kept by a licensed insolvency practitioner, and the length of time such records shall be kept;

(d) documents to be filed with, and returns to be made to, the Commission by licensed insolvency practitioners;

(e) policies, systems and controls, including internal controls, to be maintained by licensed insolvency practitioners;

(f) the procedures to be followed by and the conduct expected of a licensed insolvency practitioner when acting as an insolvency practitioner.

(3) The Insolvency Practitioners Code may—

(a) make different provision in relation to different persons, circumstances or cases and, if a minimum standard, including a minimum level of security, is specified, may impose a higher standard or a greater level of security, according to the circumstances of a particular licensed insolvency practitioner or insolvency proceeding; and

(b) include such transitional provisions as the Commission considers necessary or expedient.

(4) The Commission may amend, add to, repeal or replace the Insolvency Practitioners Code by notice published in the *Gazette.*

(5) Before issuing a notice under subsection (4), the Commission shall—

(a) ensure that a draft of the proposed amendment, addition to or replacement of the Code, is sent to, or can reasonably be expected to come to the notice of, every licensed insolvency practitioner affected by the notice, specifying the period within which written representations are to be provided to the Commission; and

(b) consider such written representations as it may receive.

(6) The failure of the Commission to comply with its obligations under subsection (5) shall not invalidate the Insolvency Practitioners Code or any amendment of, the addition to or the replacement of the Code, whether in respect of a licensed insolvency practitioner that did not receive the required notice or generally.

PART III

COMPANY ARRANGEMENTS

Preliminary

Interpretation for this Part

22. If the context allows, a reference in this Part—

(a) to the creditors of a company includes a class of creditors;

(b) to a proposal includes the proposal as amended; and

(c) to the rejection of a proposal includes the deemed rejection of a proposal.

Provisions relating to company arrangements

23. (1) A company arrangement is a compromise between a company and its creditors, or one or more classes of creditors, proposed and approved in accordance with this Part, the implementation of which is supervised by a supervisor acting as a trustee or otherwise.

(2) Without limiting subsection (1), a company arrangement may—

(a) cancel all or any part of, or vary, a liability of the company;

(b) vary the rights of the company's creditors or the terms of a debt;

(c) provide for circumstances in which persons who become creditors of the company after the approval of the arrangement are entitled to be paid under the arrangement in priority to creditors bound by the arrangement;

(d) be entered into in conjunction with any other arrangement, reorganization or scheme taking effect under the law of another jurisdiction, whether subject to Court approval or otherwise;

(e) provide for the whole or partial cancellation of a liability of the company in return for shares of any kind or for the issue by the company, or by any other person, of a debenture or a security interest;

(f) relate to an amendment of the company's articles that affects the likelihood of the company being able to pay a debt or satisfy a liability;

(g) specify a date or a time at which liabilities of the company will be calculated and provide how liabilities arising after that date are to be dealt with; and

(h) include any other provision that may be prescribed.

(3) Varying a liability or the terms of a debt under subsection (2)*(a)* or *(b)* may include—

(a) varying, adding or cancelling rights to interest; and

(b) varying the dates upon which a liability, or part of a liability, becomes due for payment.

(4) A company arrangement shall not, except with the written agreement of the secured creditor or the preferential creditor concerned—

(a) affect the right of a secured creditor of the company to enforce a security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than the creditor would receive in a liquidation of the company had it commenced at the time of approval of the arrangement.

(5) A company arrangement may provide for the supervisor—

(a) to carry on the business of the company or trade on its behalf and in its name;

(b) to realise assets of the company; or

(c) otherwise to administer or dispose of any of the company's funds.

(6) Unless the terms of the arrangement expressly provide otherwise, a company arrangement does not effect a release of any surety or co-debtor of the company.

Licensees

24. (1) A licensee shall not enter into a company arrangement with its creditors under this Part without the written consent of the Commission and any company arrangement entered into in breach of this subsection is void and of no effect.

(2) If a proposal is made, or a company arrangement approved, in respect of a company that is or at any time has been a licensee—

(a) every notice or other document required to be sent to a creditor of the company under this Part shall also be sent to the Commission; and

(b) unless the applicant is the Commission, notice shall be given to the Commission of any application to the Court under this Part and of any Court hearing.

Proposal and appointment of interim supervisor

Proposal for company arrangement

25. (1) A proposal for a company arrangement may be made—

(a) if the company is in administration, by the administrator;

(b) if the company is in liquidation, by the liquidator; or

(c) if the company is not in administration or in liquidation, by the directors.

(2) A proposal shall—

(a) be made to the company's creditors; and

(b) nominate an eligible insolvency practitioner as interim supervisor to act in relation to the proposed arrangement.

(3) A proposal for a company arrangement may be made notwithstanding any provision to the contrary in the articles of the company, whether as to the making of the proposal or the contents of the proposal.

Proposal by the directors

26. (1) The directors of a company may propose a company arrangement only if—

(a) they believe on reasonable grounds that the company is insolvent or is likely to become insolvent; and

(b) they have passed a resolution—

(i) stating their belief that the company is insolvent or is likely to become insolvent;

(ii) approving a written proposal containing the prescribed information; and

(iii) nominating an eligible insolvency practitioner to be appointed as interim supervisor.

(2) A director who votes in favour of a resolution under subsection (1)*(b)* without having reasonable grounds for believing that the company is insolvent or is likely to become insolvent commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Appointment of interim supervisor by directors

27. (1) If the directors of a company pass a resolution under section 26(1)*(b)*, the directors shall provide the nominee with—

(a) a copy of the resolution passed;

(b) a copy of the approved proposal;

(c) a statement of affairs; and

(d) a notice of intention to appoint the nominee as interim supervisor.

(2) The nominee may accept appointment as interim supervisor by delivering a copy of the notice referred to in subsection (1)*(d)*, endorsed in accordance with the Insolvency Rules, to the directors within five business days of the date when the resolution was passed.

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when the endorsed notice is delivered to the directors.

(4) A resolution passed under section 26(1)*(b)* lapses and is of no effect if the nominee does not accept appointment within five business days of the date when the resolution was passed.

Proposal by administrator or liquidator

28. (1) If a company is in administration or liquidation, the administrator or liquidator may make a proposal and either—

(a) act as interim supervisor; or

(b) appoint another eligible insolvency practitioner as interim supervisor.

(2) The administrator or liquidator, if intending to act as interim supervisor, shall—

(a) prepare a written proposal containing the prescribed information; and

(b) sign a notice of intention to act as interim supervisor.

(3) The administrator or liquidator, if intending to appoint another eligible insolvency practitioner as interim supervisor, shall provide the other insolvency practitioner with—

(a) a notice of intention to appoint the insolvency practitioner as interim supervisor; and

(b) a written proposal containing the prescribed information.

(4) The nominee accepts appointment as interim supervisor by delivering the notice referred to in subsection (3)*(a)*, endorsed in accordance with the Insolvency Rules, to the administrator or liquidator.

Time when appointment takes effect

29. (1) If the administrator or liquidator acts as interim supervisor, the appointment is deemed to have been made and takes effect on the date of the notice of intention to act as interim supervisor.

(2) If another eligible insolvency practitioner is appointed as interim supervisor, the appointment takes effect from the time when the endorsed notice of intention to appoint is received by the administrator or liquidator.

Notification of appointment of interim supervisor

30. The interim supervisor shall, within two business days of appointment, or deemed appointment—

(a) file a notice of appointment as interim supervisor with the Registrar; and

(b) if the company is a licensee, provide a copy of the notice of appointment to the Commission.

Functions of interim supervisor

31. The functions of an interim supervisor are—

(a) to prepare a report on the proposal for the creditors;

(b) to carry out any duties assigned to him by this Ordinance or the Insolvency Rules;

(c) in the case of an interim supervisor appointed by the directors or by the administrator or liquidator of a company, to undertake such functions and duties as the interim supervisor may agree to undertake with the directors or with the administrator or liquidator; and

(d) in the case of an interim supervisor appointed by the directors of a company, to monitor the affairs of the company, including the conduct of its business, during the proposal period.

Provision of information to interim supervisor

32. (1) If an interim supervisor is appointed by the directors or by the administrator or liquidator of a company, every officer of the company or the administrator or liquidator of the company, as the case may be, shall—

(a) provide to the interim supervisor such documents, information and explanations; and

(b) give the interim supervisor such assistance,

as the interim supervisor may reasonably require for the purposes of exercising his functions as interim supervisor.

(2) On the application of the interim supervisor, the Court may make an order requiring an officer of the company to comply with subsection (1).

(3) An officer of a company who fails to comply with an order of the Court made under subsection (3) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Amendment or withdrawal of proposal

33. (1) The directors of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may amend or withdraw a proposal in accordance with the Insolvency Rules—

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of the creditors' meeting has been given under section 34; or

(c) after notice of the creditors' meeting has been given under section 34 but before the date fixed for the meeting.

(2) The directors of a company may not amend or withdraw a proposal unless they have passed a resolution to do so.

(3) A proposal cannot be amended or withdrawn otherwise than in accordance with this section or section 38.

Creditors' meeting

Calling of creditors' meeting

34. (1) The interim supervisor shall—

(a) prepare a written report to the creditors on the proposal that complies with the Insolvency Rules;

(b) call a meeting of creditors for a date no later than twenty-eight days after the commencement of the proposal period for the purposes of considering whether to approve the proposal;

(c) send to each creditor, together with the notice of the meeting, a copy of the proposal, the report on the proposal and a copy of the company's statement of affairs;

(d) cause the creditors' meeting to be advertised in accordance with the Insolvency Rules; and

(e) send a copy of the notice of the meeting of creditors, together with copies of the documents accompanying the notice, to every director and to every member of the company.

(2) If a proposal is amended under section 33(1), this section and sections 37 and 38 apply to the amended proposal as if it were the original proposal.

Power to require attendance of persons at creditors' meeting

35. (1) The interim supervisor may require a director or other officer of the company and any person who, at any time during the two years prior to the date of the interim supervisor's appointment was a director or other officer, to attend the creditors' meeting if the interim supervisor considers that it is reasonable to require the person's presence.

(2) In determining whether it is reasonable to require a person to attend the creditors' meeting, shall have regard to—

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by the person in attending the meeting, unless the interim supervisor is prepared to pay those expenses;

(c) the distance that the person would be required to travel to attend the meeting; and

(d) the time that it would take the person to travel to and from and attend the meeting.

(3) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to the person at least fourteen days prior to the date of the meeting and shall be accompanied by copies of the documents required to be sent to creditors under section 34(1)*(c)*.

(4) A person who—

(a) receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, fails to attend the meeting,

commits an offence.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine of $25,000.

Entitlement of members and directors to attend creditors' meeting

36. (1) Each member and director of a company is entitled to attend the creditors' meeting and, with the permission of the chairperson, to address the meeting, but is not entitled to vote in that capacity at the meeting.

(2) The chairperson may, if he considers it appropriate, exclude any present or former director or other officer from attendance at the meeting, either completely or for any part of it.

(3) Subsection (2) applies whether or not the present or former director or other officer—

(a) is also a member; or

(b) has been sent a notice requiring him to attend the meeting.

Business to be conducted at creditors' meeting

37. (1) At the creditors' meeting, the creditors may resolve to—

(a) approve the proposal, with or without amendment, and appoint the interim supervisor, or such other eligible insolvency practitioner that may be specified in the proposal, to be the supervisor of the arrangement;

(b) adjourn the meeting to a date no later than three months after the commencement of the proposal period; or

(c) reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if—

(a) the proposed arrangement does not comply with section 23(4);

(b) the proposal has been amended without the consent of the directors or, in the case of a company in administration or liquidation, its administrator or liquidator; or

(c) the proposal has been amended otherwise than in accordance with section 33 or section 38.

(3) The proposal is deemed to be rejected, if—

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) On the rejection of a proposal, the proposal period ends and the appointment of the interim supervisor is terminated.

(5) References in this section to a meeting include, if the meeting is adjourned, the adjourned meeting.

Amendment or withdrawal of proposal at creditors' meeting

38. (1) If, at a meeting called under section 34, the creditors wish to approve a proposal with amendments that have not been made under section 33, the meeting shall be adjourned for sufficient time to enable the chairperson of the meeting to give all creditors of the company not present or represented at the meeting, at least two business days' notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) If a meeting is adjourned under subsection (1), section 37 applies to the adjourned meeting.

(3) Subsection (1) does not apply if—

(a) every creditor who was given notice of the meeting under section 34 is present or represented at the meeting; or

(b) the chairperson certifies in writing that an amendment is to correct minor errors or is otherwise not material.

(4) The directors of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator may, in accordance with the Insolvency Rules, withdraw a proposal at a creditors' meeting called under section 34.

Interim supervisor to report on creditors' meeting

39. (1) The interim supervisor shall, within five business days of the conclusion of the creditors' meeting, prepare a report on the outcome of the creditors' meeting that complies with the Insolvency Rules.

(2) The interim supervisor shall—

(a) send a copy of the report prepared under subsection (1) to every creditor and every member of the company; and

(b) file a copy with the Registrar.

(3) For the purposes of subsection (1), a creditors' meeting is concluded if—

(a) the creditors resolve either to approve or reject the proposal; or

(b) the proposal is withdrawn in accordance with section 38(4) or is deemed to be rejected.

Notice of appointment of supervisor

40. The supervisor shall, within two business days of his appointment—

(a) file a notice of appointment as supervisor with the Registrar; and

(b) if the company is a licensee, provide a copy of the notice of appointment to the Commission.

Effect of approval of proposal

41. (1) If a proposal is approved at a creditors' meeting, the company arrangement is binding on the company and on each member and creditor of the company.

(2) A company arrangement takes effect, as approved, notwithstanding any provision in the articles to the contrary.

(3) For the purposes of subsection (1), a person is a creditor of the company if the person—

(a) in the case of a company in administration or liquidation at the time that the proposal was approved, was a creditor at the commencement of the administration or liquidation; or

(b) in any other case, has a claim against the company that would be an admissible claim in the liquidation of the company if it had commenced at the time of the approval of the company arrangement.

(4) If a company arrangement is between the company and a class or classes of creditors, the arrangement is binding on a creditor only in relation to any debt due to him as a creditor of the relevant class or classes.

(5) If a company arrangement is in effect, subject to the terms of the arrangement, the directors of the company remain in office and their powers, functions and duties continue.

Implementation of company arrangement

Supervisor's functions and powers

42. (1) The supervisor has such functions and powers as are provided for by the arrangement and, if authorised by the arrangement, may act in the company's name.

(2) If joint supervisors of a company arrangement are appointed, they may act jointly or severally unless the arrangement provides otherwise.

Financial records, accounts and reports

43. (1) If a company arrangement permits or requires the supervisor—

(a) to carry on the business of the company or trade on its behalf and in its name;

(b) to realise assets of the company; or

(c) otherwise to administer or dispose of any of its funds,

the supervisor shall keep financial records that correctly record and explain the receipts, expenditure and other transactions relating to his acts and dealings in and in connection with the arrangement.

(2) The supervisor shall retain the financial records kept under subsection (1) for a period of not less than six years after the termination of the arrangement.

(3) The supervisor shall prepare such accounts and reports as are specified in the Insolvency Rules.

Completion or termination of arrangement

44. If a company arrangement is completed or terminated prematurely, the supervisor shall, within twenty-eight days of its completion or termination—

(a) file a notice of completion or termination with the Registrar; and

(b) send a notice of completion or termination to—

(i) the company;

(ii) each creditor of the company who is bound by the arrangement; and

(iii) each member of the company.

Modification of company arrangement

Supervisor may propose modification of arrangement

45. (1) In this section and in section 46—

(a) "creditor", in relation to a company arrangement, means a creditor bound by the arrangement; and

(b) "proposal" means a proposal to modify a company arrangement.

(2) If the supervisor considers it appropriate, he may propose a modification of the arrangement at a meeting of creditors called for the purpose.

(3) The supervisor shall call a meeting of creditors under subsection (2) by sending to each creditor—

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Insolvency Rules.

(4) The supervisor shall send a copy of the notice of the meeting and the report on the proposed modification to each member and director of the company.

Modification of company arrangement

46. (1) Unless the Insolvency Rules otherwise provide, sections 35, 36, 37 and 39 and the relevant Insolvency Rules apply, with suitable modifications, to a meeting called under section 45.

(2) If a proposal to modify a company arrangement is approved—

(a) the modified arrangement is binding on the company and on each member and each creditor of the company; and

(b) the provisions of this Part and the relevant Insolvency Rules applicable to a company arrangement apply to the modified arrangement.

(3) A company arrangement may not be modified otherwise than in accordance with section 45 and this section.

Remuneration

Remuneration and expenses

47. (1) An interim supervisor is entitled to be—

(a) reimbursed for any costs and expenses incurred prior to the approval of the company arrangement; and

(b) paid remuneration for acting as interim supervisor as agreed with the directors or, if the company is in administration or liquidation, with the administrator or liquidator.

(2) A supervisor is entitled to be reimbursed for all costs and expenses incurred and paid remuneration for acting as interim supervisor as—

(a) are sanctioned by the terms of the arrangement; or

(b) would be payable, or correspond to those which would be payable, in an administration or liquidation.

Fixing of remuneration and expenses by Court

48. (1) Notwithstanding the terms of a company arrangement, on the application of a person referred to in subsection (4), the Court may review and fix the amount paid or to be paid by way of remuneration and expenses to a supervisor or an interim supervisor.

(2) Subject to subsection (3), the Court's power under subsection (1)—

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

(b) is exercisable, even though the supervisor or interim supervisor has died or ceased to act before the making of the application or the order; and

(c) extends to requiring the supervisor or interim supervisor or the personal representative of the supervisor or interim supervisor to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to, or retained by, the supervisor or interim supervisor as remuneration or expenses exceeds that fixed by the Court for the period concerned.

(3) The power conferred by subsection (2)*(c)* may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(4) Application to the Court for an order under subsection (1) may be made by any of the following persons—

(a) the supervisor or interim supervisor; or

(b) the company or—

(i) if the company is in liquidation, its liquidator; or

(ii) if the company is in administration, its administrator.

(5) In fixing the remuneration of a supervisor or interim supervisor under this section, the Court shall apply the general principles specified in section 464.

Resignation of supervisor

Resignation of supervisor

49. (1) The supervisor of an arrangement may resign only—

(a) with the approval of the creditors, on one or more of the grounds specified in subsection (2); or

(b) with the leave of the Court granted under section 50(2)*(b)* or *(c)*.

(2) The grounds for resignation specified for the purposes of subsection (1) are—

(a) the supervisor's ill health;

(b) the cessation by the supervisor of practice as an insolvency practitioner;

(c) a change of circumstances rendering it impracticable for the supervisor to continue in office; and

(d) that the supervisor is a joint supervisor and at least one supervisor will remain in office following the supervisor's resignation.

Applications to Court

Appointment of interim supervisor or supervisor by Court

50. (1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner be appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made—

(a) if the supervisor or interim supervisor has failed to comply with a duty imposed upon him under this Part or has died, by the directors of the company, or if it is in administration or liquidation, by the administrator or liquidator;

(b) if it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act, by the directors of the company, or if it is in administration or liquidation by the administrator or liquidator, or by the supervisor or interim supervisor; or

(c) if the licence of the insolvency practitioner appointed as supervisor or interim supervisor is suspended or revoked, by the supervisor or interim supervisor or the Commission.

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

Application to Court for directions and other orders

51. (1) If a company arrangement is approved or modified, the Court may—

(a) on an application made by a person specified in subsection (2)—

(i) give directions to the supervisor in relation to any matter arising;

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

(iii) make such other order as it considers appropriate; or

(b) on an application made by the supervisor or, if appropriate the administrator or liquidator—

(i) discharge the administration order or terminate the liquidation; and

(ii) give such directions regarding the administration or liquidation as it considers appropriate.

(2) An application under subsection (1)*(a)* may be made by the supervisor, by any administrator or liquidator, by a creditor, director or member of the company, by a surety of a liability of the company, by a co-debtor of the company, by a person affected by the company arrangement or, if the company is a licensee, by the Commission.

(3) The Court shall not make an order under subsection (1)*(b)*—

(a) until a period of twenty-eight days after the interim supervisor's report is filed under section 39(2); or

(b) at any time when an application under section 52, or an appeal in respect of such an application, is outstanding or during the period within which such an appeal may be brought.

Application on grounds of unfair prejudice

52. (1) An application may be made by a person specified in subsection (2) for an order under section 53 on one or both of the following grounds—

(a) that a company arrangement approved or modified by the creditors unfairly prejudices the interests of a member, creditor, surety or co-debtor of the company; or

(b) that there has been a material irregularity at or in relation to the meeting at which the arrangement was approved or modified.

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

(a) under subsection (1)*(a)*, by—

(i) the supervisor; or

(ii) a member, creditor, surety or co-debtor of the company who claims his interests have been unfairly prejudiced; or

(b) under subsection (1)*(b)*, by—

(i) a member or creditor of the company;

(ii) the supervisor or the person who, immediately prior to the approval of the arrangement, acted as interim supervisor;

(iii) if the company is in administration, the administrator;

(iv) if the company is in liquidation, the liquidator; or

(v) if the company is a licensee, the Commission.

Court order

53. (1) If it is satisfied as to either of the grounds specified in section 52(1), the Court—

(a) may revoke or suspend—

(i) any decision approving or modifying the arrangement; or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity; and

(b) may give a direction to any person—

(i) for the calling of a further creditors' meeting to consider any amended proposal for a company arrangement that the directors or the supervisor may make;

(ii) for the calling of a further creditors' meeting to consider any amended proposal for a modification of the arrangement that the supervisor may make; or

(iii) if there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the arrangement or for the modification of a company arrangement.

(2) If at any time after giving a direction under subsection (1)*(b)*(i) or (ii), the Court is satisfied that the directors, or the supervisor, does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the company arrangement or the modification of a company arrangement.

(3) If the Court, on an application under this section, gives a direction under subsection (1)*(b)* or revokes or suspends a decision under subsection (1)*(a)* or subsection (2), the Court may give such supplemental directions as it considers appropriate and, in particular, directions with respect to things done under the company arrangement since it, or any modification, took effect.

(4) Except as provided in this section, a decision taken at a meeting called under section 34 or 45 is not invalidated by any irregularity at or in relation to the meeting.

(5) Without limiting section 52(1)*(a)*, the interests of a member, creditor, surety or co-debtor of the company are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

(6) Subject to subsection (7), no application under this section shall be made after the company arrangement has been completed or has prematurely terminated.

(7) A creditor who did not participate in the approval of a company arrangement may make an application under this section after the completion of a company arrangement if, when the arrangement was completed, the creditor was unaware of the arrangement.

(8) An application under subsection (7) shall be made within four weeks of the creditor first becoming aware of the arrangement.

(9) For the purposes of this section, a creditor does not participate in the approval of a company arrangement if, for whatever reason, the creditor—

(a) was not given notice of the meeting of creditors called to consider the proposal; and

(b) did not attend the meeting at which the arrangement was approved, whether in person or by proxy.

Application to Court by former supervisor or interim supervisor

54. If an application may be made to the Court by a supervisor or an interim supervisor under section 50, 51 or 52, an application may, with the leave of the Court, be made by the person who was the supervisor or interim supervisor immediately before, as the case may be—

(a) the termination of his appointment;

(b) the termination of the company arrangement; or

(c) the termination of the proposal period.

Offences

False representations

55. (1) An officer of a company who makes any false representation or who fraudulently does or omits to do anything for the purpose of obtaining the approval of the creditors of the company to a company arrangement commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of $50,000;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $100,000 or to both.

PART IV

ADMINISTRATION

Preliminary

Interpretation for this Part

56. (1) In this Part—

"interested person" means—

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest;

(b) in relation to an asset not belonging to a company which is used or occupied by or in the possession of the company, the owner or lessor of the asset;

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress; and

(d) in relation to a guarantee of a liability of the company, the person entitled to enforce the guarantee; and

"qualifying floating charge" means a floating charge created by an instrument which states that section 59 applies to the charge.

Objective of administration

57. (1) Subject to subsections (2) and (3), the administrator of a company shall perform his functions with the objective of—

(a) rescuing the company, or as much as possible of its business, as a going concern;

(b) achieving a better result for the creditors as a whole than would be likely if the company were to enter into liquidation, without first being in administration; or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) The administrator shall perform his functions with the objective specified in subsection (1)*(a)* unless he considers either—

(a) that it is not reasonably practicable to achieve that objective; or

(b) that the objective specified in subsection (1)*(b)* would achieve a better result for the company's creditors as a whole.

(3) The administrator may perform his functions with the objective specified in subsection (1)*(c)* only if—

(a) he considers that it is not reasonably practicable to achieve either of the objectives specified in subsection (1)*(a)* or *(b)*;

(b) the objective is not inconsistent with any additional or varied objectives that may be applicable to the company; and

(c) carrying out that objective will not unnecessarily harm the interests of the creditors of the company as a whole.

(4) The Governor may, by notice published in the *Gazette*—

(a) add to or vary the objectives specified in subsection (1) in relation to a specific category or categories of company; and

(b) provide for the priority of the additional or varied objectives.

(5) Subject to subsection (3) and any notice issued by the Governor under subsection (4), the administrator shall perform his functions in the interests of the creditors of the company as a whole.

Commencement of administration

58. (1) The administration of a company commences, and the appointment of an administrator takes effect—

(a) in the case of an administrator appointed by the holder of a qualifying charge under section 59, on the date that the documents specified in section 61 are filed with the Court; and

(b) in the case of an administrator appointed by the Court, when the administration order is made.

Appointment of administrator by holder of qualifying floating charge

Appointment by holder of qualifying floating charge

59. (1) Subject to section 60, the holder of a qualifying floating charge in respect of a company's property who is entitled to appoint an administrative receiver in respect of the company may, instead of appointing an administrative receiver, appoint an eligible insolvency practitioner as the administrator of the company.

(2) On the appointment of an administrator under this section taking effect, any application for the appointment of a liquidator shall be suspended.

(3) The appointment of an administrator under this section cannot be revoked once the appointment has taken effect.

(4) Subject to such provisions or modifications as may be specified in this Ordinance or in the Insolvency Rules, sections 74 to 107 apply—

(a) to an administrator appointed under this section; and

(b) to and in relation to the administration of a company, if the administrator is appointed under this section.

Restrictions on power to appoint

60. The holder of a qualifying floating charge may not appoint an administrator under section 59—

(a) if—

(i) an administrative receiver is in office;

(ii) the company is in administration;

(iii) a provisional liquidator of the company has been appointed under section 171, and the appointment has not been terminated; or

(iv) the company is in liquidation; and

(b) unless—

(i) the holder of any prior floating charge in respect of the company's property has been given at least two business days' written notice of the proposed appointment; or

(ii) the holder of any prior floating charge in respect of the company's property has consented in writing to the making of the appointment.

Notice to Court of appointment

61. (1) A person who appoints an administrator under section 59 shall file with the Court—

(a) a notice of appointment; and

(b) such other documents as may be prescribed.

(2) The notice of appointment shall—

(a) include a statutory declaration made in accordance with the Insolvency Rules by or on behalf of the person who makes the appointment—

(i) that the person is the holder of a qualifying floating charge in respect of the company's property;

(ii) that each floating charge relied on in making the appointment entitled the person to appoint an administrative receiver on the date of the appointment of the administrator; and

(iii) that the appointment is in accordance with sections 59 and 60; and

(b) identify the person appointed as administrator.

(3) A person who, in a statutory declaration made under subsection (2), makes a statement which is false and which he does not reasonably believe to be true commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $100,000 or to both.

Notice and advertisement of appointment

62. (1) A person who appoints an administrator under section 59 shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of section 61 are complied with.

(2) An administrator appointed under section 59 shall—

(a) give notice of the appointment to such persons and in such manner as may be prescribed; and

(b) advertise the appointment in accordance with the Insolvency Rules.

(3) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment, to a fine of $20,000.

Indemnity for invalid appointment

63. (1) This section applies if—

(a) a person purports to appoint an administrator under section 59; and

(b) the appointment is discovered to be invalid.

(2) If this section applies, the Court may order the person who purported to make the appointment to indemnify the person appointed against any liability which arises solely by reason of the appointment's invalidity.

Appointment of Administrator by the Court

Application for administration order

64. (1) An application to the Court for an administration order in relation to a company may be made by one or more of the following—

(a) the company;

(b) the directors of the company;

(c) a creditor of the company, including the holder of a qualifying floating charge;

(d) the supervisor of a company arrangement in respect of the company;

(e) the Commission, if the company—

(i) is or at any time has been a licensee; or

(ii) is carrying on, or at any time has carried on, unauthorised financial services business; or

(f) if the company is in liquidation, the liquidator.

(2) Subject to subsection (4), an application for an administration order shall be served not less than seven business days prior to the date fixed for the hearing—

(a) on any person who has appointed or is or may be entitled to appoint an administrative receiver of the property for the company;

(b) if an administrative receiver has been appointed, on the administrative receiver;

(c) if an administrator has been appointed under section 59, on the administrator;

(d) if the application is made by any person other than the company, on the company;

(e) if an application has been made for the appointment of a liquidator of the company, on the applicant and on any provisional liquidator of the company;

(f) on the Commission if—

(i) the company is or at any time has been a licensee; and

(ii) the applicant is not the Commission; and

(g) on any other person prescribed.

(3) The Court shall not—

(a) make an administration order unless it is satisfied that service of the application has been effected on the persons specified in subsection (2)*(a)* to *(f)*; or

(b) abridge the time period specified in subsection (2) in respect of a person specified in subsection (2)*(a)*, *(b)* or *(c),* without that person's consent.

(4) If the applicant for an administration order is the holder of a qualifying floating charge who has appointed, or is entitled to appoint, an administrative receiver under the charge—

(a) the period of notice required under subsection (2) is reduced to two business days; and

(b) subsection (3) does not apply.

(5) An application for an administration order shall not be withdrawn except with the leave of the Court.

Grounds for administration order

65. (1) The Court may make an administration order under section 68 in relation to a company if—

(a) subject to section 66, the company is insolvent or is likely to become insolvent; and

(b) the Court considers that there is a reasonable prospect that the administration order will achieve one or more of the objectives specified in section 57(1), as added to or varied by a notice issued under section 57(4), if any.

(2) The Court shall not make an administration order in respect of a company that is in liquidation unless the liquidator of the company is the applicant for the order.

Application made by holder of floating charge

66. (1) This section applies if an application for an administration order—

(a) is made by the holder of a floating charge who has appointed, or is entitled to appoint, an administrative receiver; and

(b) the application includes a statement that this section applies.

(2) Notwithstanding section 65, if this section applies, the Court may make an administration order whether or not it is satisfied that the company is insolvent or is likely to become insolvent.

Qualifying administrative receiver or administrator appointed

67. (1) For the purposes of this section, an administrative receiver of a company is a qualifying administrative receiver and an administrator of a company is a qualifying administrator if—

(a) the administrative receiver or the administrator, as the case may be, is a licensed insolvency practitioner, whether or not appointed to act jointly with a foreign insolvency practitioner; and

(b) notice of appointment as administrative receiver or administrator has been filed no later than the day before the date of the hearing of the application for an administration order against the company—

(i) in the case of the appointment of an administrative receiver, with the Registrar in accordance with section 111*(a)*; or

(ii) in the case of an administrator, with the Court under section 61(1).

(2) Subject to subsection (3), the Court shall not make an administration order against a company, and shall dismiss the application, if the Court is satisfied that—

(a) a qualifying administrative receiver has been appointed for the company who, in accordance with section 136(2), is entitled to act; or

(b) a qualifying administrator has been appointed under, and in accordance with, section 59.

(3) Subsection (2) does not apply if—

(a) the applicant is the person by whom or on whose behalf the administrative receiver or administrator was appointed; or

(b) the Court is satisfied—

(i) that the person by whom the administrative receiver or administrator was appointed consents to the making of an order; or

(ii) that any security interest under which the administrative receiver or administrator was appointed would, if an administration order was made, be liable to be set aside as a voidable transaction under Part IX.

(4) A determination by the Court under subsection (3)*(b)*(ii) that it is not satisfied that a security interest would be liable to be set aside as a voidable transaction does not prevent any administrator or liquidator that may be appointed making a claim to set the security interest aside as a voidable transaction under Part IX.

Powers of Court on application

68. (1) On the hearing of an application for an administration order, the Court may—

(a) subject to section 65 and section 67(2), appoint an eligible insolvency practitioner to be the administrator of the company;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make any interim order or other order that it considers appropriate; or

(e) treat the application as an application for the appointment of a liquidator and make any order that it could make under section 170.

(2) If the Court adjourns the hearing, it shall give directions as to the persons to whom, and how, notice is to be given.

(3) An interim order under subsection (1)*(d)* may restrict the exercise of any powers of the directors or of the company, whether by reference to the consent of the Court or of a person who is an eligible insolvency practitioner in relation to the company, or otherwise.

(4) If the Court makes an administration order on the application of the liquidator of a company—

(a) the Court shall—

(i) discharge the order appointing the liquidator;

(ii) make provision for such matters as may be prescribed;

(iii) specify which of the powers of an administrator are to be exercisable by the administrator;

(b) the Court may make such consequential provision as it considers appropriate; and

(c) this Part has effect with such modifications as the Court may specify.

Effect of administration order

69. (1) The appointment of an administrator takes effect when the administration order is made.

(2) If the Court makes an administration order—

(a) any application for the appointment of a liquidator shall be dismissed; and

(b) any administrative receiver of the company is deemed to have vacated office.

Notification and advertisement of administration order

70. If an administration order is made, the administrator shall—

(a) forthwith, after the making of the order, give notice of the order to—

(i) any person who has appointed, or who is or may be entitled to appoint, an administrative receiver of the company;

(ii) any administrative receiver who has been appointed;

(iii) if an application for the appointment of a liquidator is pending, to the applicant and to any provisional liquidator that may have been appointed; and

(iv) such other persons as may be prescribed;

(b) within five days of the making of the order—

(i) advertise the order; and

(ii) file a notice of the order with the Registrar and, if the company in administration is or at any time has been a licensee, with the Commission; and

(c) within twenty-eight days of the order, send a written notice of the order to the company and to every creditor of the company.

Discharge or variation of administration order

71. (1) The administrator of a company may at any time apply to the Court for the administration order to be discharged or to be varied and, if the order is to be discharged, the administrator may apply for the appointment of a liquidator.

(2) An administrator shall make an application under subsection (1) if the administrator—

(a) considers that the objectives of the administration have been fully achieved or that the objectives are incapable of achievement; or

(b) is required to do so by a meeting of creditors summoned for the purpose.

(3) On the hearing of an application under subsection (1), the Court may discharge or vary the administration order and make such consequential provision as it considers appropriate, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it considers appropriate, including an order under section 72.

Appointment of liquidator or dissolution of company on discharge

72. (1) If the Court makes an order for the discharge of an administration order made in respect of a company and the Court is satisfied that the company is insolvent—

(a) the Court may make an order for the appointment of the Official Assignee or an eligible insolvency practitioner to be the liquidator of the company; or

(b) if it is satisfied that no useful purpose would be served by the appointment of a liquidator, the Court may dissolve the company.

(2) The Court may appoint the administrator to be the liquidator under subsection (1)*(a)*.

(3) An order under subsection (1)*(a)* takes effect as an order made under section 170 on the application of the company.

(4) If an order is made for the appointment of a liquidator under this section, Part VII applies to the liquidation of the company.

Filing copy of variation or discharge order with Registrar

73. (1) If an administration order is discharged or varied, the administrator or, if the order is discharged, the person who immediately before the discharge was the administrator of the company, shall within fourteen days of the date of the order effecting the variation or discharge, file a copy of the order with the Registrar.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Moratorium

Moratorium period

74. (1) Subject to subsection (2), a moratorium period in respect of a company commences on the filing of an application for an administration order and terminates on—

(a) the dismissal of the application for an administration order; or

(b) if an administration order is made, upon the discharge of the order.

(2) If an application for an administration order is filed at a time when an administrative receiver of the company is in office and the person by or on whose behalf

the administrative receiver was appointed has not consented to the making of an order, the moratorium period under subsection (1) does not commence unless and until—

(a) that person so consents in writing;

(b) the administrative receiver vacates or is deemed to vacate office; or

(c) an administration order is made.

(3) If an administrator is appointed under section 59, a moratorium period in respect of the company commences when the appointment of the administrator takes effect and terminates when the company ceases to be in administration.

Effect of moratorium

75. (1) Subject to section 76, during the moratorium period—

(a) no order may be made for the appointment of a liquidator or a provisional liquidator;

(b) notwithstanding paragraph *(h)*, no resolution may be passed for the appointment of a liquidator;

(c) no steps may be taken to enforce any security interest over the company's assets, except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(d) no right of forfeiture by peaceable re-entry may be exercised in relation to premises let to the company, except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(e) except with the leave of the Court or, if the company is in administration, with the consent of the administrator, no steps may be taken to repossess assets in the possession of the company supplied to the company—

(i) under a hire purchase, conditional sale or chattel leasing agreement; or

(ii) subject to a retention of title agreement;

(f) no legal process, including legal proceedings and execution, may be commenced or continued or distress levied against the company or its assets except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(g) no share may be transferred and no alteration may be made in the status of the members of the company, whether by an amendment of the articles or in any shareholders' or members' agreement or otherwise, except with the leave of the Court; and

(h) no resolution of the members may be passed except with the leave of the Court or, if the company is in administration, with the consent of the administrator.

(2) On an application for leave under subsection (1)*(c)* to *(h)*, the Court may grant leave subject to such terms and conditions as it considers appropriate.

Exceptions to section 75

76. (1) An application for the appointment of a liquidator on the ground specified in section 161(1)*(c)* (the public interest ground) may be made or proceeded with during the moratorium period.

(2) During the period beginning with the filing of an application for an administration order and ending with the making of an administration order, section 75(1) does not—

(a) prevent, or require the leave of the Court for, the appointment of—

(i) an administrative receiver of the company; or

(ii) an administrator of the company under section 59; or

(b) limit or affect the carrying out by an administrative receiver, or an administrator appointed under section 59, of his functions.

(3) Section 75(1) does not prevent, or require the leave of the Court to be obtained for—

(a) the enforcement of a charge on assets belonging to a company if, before the commencement of the moratorium period, an interested person lawfully—

(i) entered into possession of or assumed control of the assets; or

(ii) entered into a binding agreement to sell the assets,

for the purpose of enforcing the charge on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a company if, before the commencement of the moratorium period, an interested person lawfully entered into possession, or assumed control of those assets;

(c) the exercise by a creditor of any set-off that the creditor would have been entitled to exercise under section 151 if the company was in liquidation, the liquidation having commenced at the time that the moratorium period commenced; or

(d) the filing of an application for the appointment of a liquidator under Part VII.

(4) Notwithstanding section 75(1)*(a)*, the Court, on an application for the appointment of a liquidator, may make an order during the moratorium period appointing a liquidator or a provisional liquidator on the grounds specified in section 161(1)*(c)* (the public interest ground).

(5) On making an order under subsection (4), the Court shall either—

(a) discharge the administration order, or terminate the appointment of the administrator under section 59, and make such consequential provision as it considers appropriate; or

(b) order that the appointment of the administrator shall continue to have effect.

(6) If the Court makes an order under subsection (5)*(b)*, it may also—

(a) specify which of the powers of an administrator are to be exercisable by the administrator;

(b) order that this Part has effect with such modifications as the Court may specify; and

(c) make such consequential provision as it considers appropriate.

Preservation of charged and other assets

77. (1) During the period beginning with the commencement of the moratorium period in respect of a company under section 74(1) and ending with the making of an administration order against the company or the dismissal of the application, the company may not, without the written consent of the interested person concerned, or the leave of the Court granted under section 78, dispose of or otherwise deal with—

(a) any assets subject to a charge, other than a floating charge;

(b) any assets subject to a floating charge, otherwise than in the ordinary course of its business; or

(c) any assets in the company's use, occupation or possession of which another person is the owner or lessor, including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) subject to subsection (2), goods supplied subject to a retention of title agreement.

(2) Subsection (1)*(c)*(ii) does not prevent a company disposing of or dealing with goods supplied subject to a retention of title agreement in the ordinary course of business.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $25,000.

Disposal of perishable assets

78. (1) This section applies during the period beginning with the commencement of the moratorium period under section 74(1) and ending with—

(a) the making of an administration order; or

(b) the dismissal of the application for an administration order.

(2) If any assets referred to in section 77(1) are perishable assets, the Court may, on the application of the company, make an order permitting the company to dispose of those assets.

(3) If the Court makes an order under subsection (2) permitting a company to dispose of assets that are subject to a floating charge, the holder of the security interest has the same priority in respect of any assets of the company directly or indirectly representing the assets disposed of as the holder of the charge would have had in respect of the assets subject to the security interest.

(4) If an order is made under subsection (2) permitting a company to dispose of assets that are not subject to a floating charge—

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make good the deficiency,

shall be applied towards discharging the sums payable to the interested person concerned.

(5) If subsection (4) applies to two or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (4)*(b)* shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(6) If the Court makes an order under subsection (2)—

(a) the Court shall make such consequential orders as it considers appropriate, including—

(i) giving directions as to the conduct of the disposal; and

(ii) making provision for the protection of the proceeds of the disposal;

(b) the company shall, within fourteen days of the date of the order, file with the Registrar a notice of the order together with a sealed copy of the order.

(7) A company that, without reasonable excuse, contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

Application to Court in relation to moratorium

79. (1) During the period beginning with the commencement of the moratorium period and ending with the making of an administration order, the Court may, on an application made by a creditor or member of the company, by a person affected by section 75 or, if the company is or at any time has been a licensee, by the Commission—

(a) give directions in relation to any matter arising in connection with that section; or

(b) make such other order as it considers appropriate.

(2) Without limiting subsection (1), an order under that subsection may—

(a) regulate the management by the directors of the company's affairs, business and assets during the remainder of the moratorium period;

(b) require the directors to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained they have omitted to do;

(c) require the calling of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; and

(d) make such provision as the Court considers necessary to protect the interests of one or more creditors of the company during the moratorium period.

(3) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

Role, duties and powers of administrator

Role and general duties of administrator

80. (1) While a company is in administration, the administrator has control of, and shall manage, the business, assets and affairs of the company.

(2) An administrator shall, on appointment, take into his custody or under his control the assets to which the company in administration is or appears to be entitled.

(3) The administrator of a company may—

(a) carry on the company's business;

(b) terminate or dispose of all or part of the company's business, and may dispose of any of the company's assets; and

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

(4) Subject to subsection (5), the administrator shall manage the business, assets and affairs of the company in furtherance of the objectives specified in section 57(1), as added to or varied by any notice issued under 57(4).

(5) The administrator shall—

(a) after the approval of proposals under section 93, act in accordance with those proposals; and

(b) at all times act in accordance with any directions that may be given by the Court.

(6) The administrator shall perform the functions of administrator as quickly and efficiently as reasonably practicable.

Administrator acts as agent of company

81. The administrator, whether appointed by the Court or by the holder of a floating charge, in performing the functions, undertaking the duties and exercising the powers of administrator, acts—

(a) as the company's agent; and

(b) as an officer of the Court.

General powers of administrator

82. (1) The administrator of a company—

(a) may do anything necessary for the management of the business, assets and affairs of the company; and

(b) has the specific powers specified in Schedule 1.

(2) Without limiting subsection (1), the administrator may—

(a) remove any director of the company;

(b) appoint a person to be a director of the company, whether to fill a vacancy or not;

(c) call a meeting of the members or the creditors of the company;

(d) require a receiver, other than a qualifying administrative receiver, to vacate office;

(e) apply to the Court for directions in respect of the administration of the company;

(f) use the company's seal; and

(g) do all acts on behalf of the company and execute any deed, receipt or other document in the name of the company.

(3) The following persons are not concerned to inquire whether the administrator is acting within his powers—

(a) a person dealing with the administrator in good faith and for value; and

(b) a person who acquires any interest in assets of the company in administration from a person referred to in paragraph *(a)* in good faith and for value.

(4) The acts of the administrator are valid notwithstanding any defect in the nomination, appointment or qualifications of the administrator.

(5) If a receiver is required to vacate office under subsection (2)*(d)* the Court, on the application of the administrator or the receiver, may make such directions as it considers appropriate, including directions as to—

(a) the terms upon which assets are to be passed to the administrator;

(b) the payment of the debts of preferential creditors; and

(c) the payment of the receiver's remuneration and the reimbursement of expenses that the receiver has properly incurred.

Power to make distributions

83. (1) The administrator of a company may make a distribution—

(a) to a secured creditor or a preferential creditor without the leave of the Court; and

(b) to any other creditor, with the leave of the Court.

(2) If the administrator makes a distribution under subsection (1), sections 146 to 154 and sections 206 to 216 apply with such modifications as may be specified in the Insolvency Rules or, to the extent that modifications are not so specified, with such modifications as are appropriate.

Power to deal with assets subject to floating charge

84. (1) The administrator may dispose of, or otherwise exercise his powers in relation to, any assets of the company that are subject only to a floating charge, whether or not the charge has crystallised.

(2) If assets are disposed of or otherwise dealt with under subsection (1)—

(a) the holder of the security interest has a charge over any assets of the company directly or indirectly representing the assets disposed of; and

(b) for the purposes of this Ordinance, the charge referred to in paragraph *(a)* has the same priority in respect of the substituted assets as the security interest had in relation to the assets disposed of or dealt with.

Application to Court to deal with other charged assets

85. (1) On the application of the administrator, the Court may make an order authorising the administrator to dispose of—

(a) assets of the company that are subject to a security interest that is not a floating charge; and

(b) any goods in the possession of the company that were supplied to it—

(i) under a hire purchase, conditional sale or chattel leasing agreement; or

(ii) subject to a retention of title agreement.

(2) The Court shall not make an order under subsection (1) unless it considers that the disposal of the assets, with or without other assets, would be likely to promote the objectives specified in section 57(1), as added to or varied by any notice issued under section 57(4).

(3) It is a condition of an order under subsection (1) that the following shall be applied towards discharging the sums secured by the security interest or, in the case of an agreement specified in subsection (1)*(b)*, the sums payable under the agreement (if any)—

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make good the deficiency.

(4) If a condition under subsection (3) relates to two or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (3)*(b)* shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(5) An administrator who—

(a) contravenes subsection (5), without reasonable excuse; or

(b) fails to comply with a condition imposed under this section,

commits an offence and is liable—

(i) on summary conviction, to a fine of $25,000;

(ii) on conviction on indictment, to a fine of $50,000.

Disclaimer

86. (1) The administrator may disclaim any onerous property of the company, even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(2) Sections 217 to 223, and any provisions in the Insolvency Rules with regard to disclaimer by a liquidator, apply to the disclaimer of onerous property by the administrator, with the following modifications—

(a) "administrator" is substituted for "liquidator";

(b) "administration" is substituted for "liquidation"; and

(c) the following is substituted for section 220(2):

"(2) A person sustaining loss or damage as a result of a disclaimer of onerous property has a claim against the company as an unsecured creditor for the amount of the loss or damage.".

Directors remain in office

87. (1) While a company is in administration the directors and other officers of the company remain in office and their powers, functions and duties continue except to the extent that—

(a) they are inconsistent with the powers, functions and duties of the administrator; or

(b) the administrator otherwise directs in writing.

(2) Notwithstanding subsection (1), a director may, with the prior written consent of the administrator, exercise a power inconsistent with the powers, functions and duties of the administrator.

(3) Any power conferred on the company in administration or its directors or other officers, whether by a law, the company's articles or otherwise, which could be exercised so as to interfere with the exercise by the administrator of his powers, shall not be exercised without the written consent of the administrator.

Administrator's investigation of company's affairs

Duty to investigate

88. (1) The administrator of a company shall investigate the company's business, assets, affairs and financial circumstances and, for this purpose, may require one or more relevant persons to prepare and submit to him, a statement of affairs.

(2) Subject to section 249, the administrator shall file each statement of affairs and each affidavit of concurrence that he receives with the Court.

Duty to prepare report

89. (1) The administrator shall, within sixty days of the commencement of the administration, prepare a report as to whether, in his opinion, further enquiries are desirable with respect to—

(a) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(b) possible claims under sections 266 to 268.

(2) The administrator shall send a copy of the report prepared under subsection (1)—

(a) to each creditor of the company; and

(b) if in the report the administrator states that further enquiries are desirable with respect to a matter referred to in subsection (1), to the Official Assignee.

Duty to report to Commission

90. (1) If it appears to the administrator that the company is carrying on or has carried on unauthorised financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

(2) An administrator who makes a report to the Commission under subsection (1) shall, for the purposes of section 106, treat the company as if it was a licensee.

Administrator's proposals for administration

Administrator's proposals and creditors meeting

91. (1) Subject to subsection (3), the administrator shall—

(a) prepare a report setting out proposals for the achievement of the objectives of the administration;

(b) call a meeting of creditors to be held on a date no later than sixty days after the date of the administration order, or such longer period as the Court may allow, for the purpose of considering whether to approve the proposals;

(c) send a copy of the report prepared under paragraph *(a)* to each creditor together with the notice of the meeting;

(d) send a copy of the notice calling the meeting and the report to each member of the company or advertise the meeting and report in accordance with the Insolvency Rules;

(e) file a copy of the notice calling the meeting together with the report with the Registrar; and

(f) cause the creditors' meeting to be advertised in accordance with the Insolvency Rules.

(2) The report prepared by the administrator under subsection (1)*(a)* shall contain such information as may be prescribed.

(3) The administrator is not required to call a meeting of creditors under subsection (1)*(b)* if—

(a) the administrator is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full; and

(b) the report prepared under subsection (1)*(a)* contains a statement that—

(i) the administrator is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full; and

(ii) the administrator does not intend to call a meeting of creditors under this section.

(4) Notwithstanding subsection (3), if requested to do so by creditors whose debts amount to at least 10% in value of the total liabilities of the company, the administrator shall call a meeting of creditors to be held no later than thirty days after the date upon which he receives the request.

(5) A request for a meeting under subsection (4) must be delivered to the administrator in the manner and within the prescribed period.

(6) An administrator who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Attendance at meeting of directors and others

92. (1) If the administrator considers that it is reasonable to require the presence at a creditors' meeting called under section 91 of a person specified in subsection (2), the administrator may, by notice, require the person to attend.

(2) Subsection (1) applies to any officer of the company and any person who, at any time during the two years prior to the date of the notice, was an officer of the company.

(3) In determining whether it is reasonable to require a person to attend the creditors' meeting, the matters that the administrator shall have regard to include—

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by the person in attending the meeting, unless the administrator is prepared to pay those expenses;

(c) the distance that the person would be required to travel to attend the meeting; and

(d) the time that it would take the person to travel to and from and attend the meeting.

(4) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to that person at least fourteen days prior to the date of the meeting and shall be accompanied by a copy of the administrator's report on the proposals.

(5) A person commits an offence if the person—

(a) receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, fails to attend the meeting.

(6) A person who commits an offence under subsection (5) is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Consideration of proposals by creditors

93. (1) At the creditors' meeting called under section 91, the creditors may resolve to—

(a) approve the administrator's proposals, with or without amendment;

(b) reject the proposals; or

(c) adjourn the meeting.

(2) A resolution to approve the administrator's proposals is invalid and of no effect if—

(a) the proposals have been amended without the consent in writing of the administrator; or

(b) the proposal has been amended otherwise than in accordance with section 94.

(3) The administrator shall, within fourteen days of the conclusion of a meeting called under section 91—

(a) report the result of the meeting to the Court;

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

(c) send a notice setting out the result of the meeting to each creditor.

(4) The report and notice required under subsection (3) shall have annexed to it details of—

(a) the proposals considered at the meeting and of any amendments to those proposals that were considered; and

(b) such proposals and amendments as were approved.

(5) If the creditors resolve not to approve the administrator's proposals or fail to pass one of the resolutions specified in subsection (1), the Court may, by order—

(a) discharge the administration order and make such consequential provisions as it considers appropriate;

(b) adjourn the hearing, conditionally or unconditionally; or

(c) make an interim order or any other order that it considers appropriate.

(6) An administrator who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of $10,000.

Amendment of proposals at creditors' meeting

94. (1) If, at a meeting called under section 91, the creditors wish to approve an amended proposal, the meeting shall be adjourned for sufficient time to enable the

administrator to give all creditors not present or represented at the meeting at least two business days' notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) If a meeting is adjourned under subsection (1), section 93 applies to the adjourned meeting.

(3) Subsection (1) does not apply if—

(a) every creditor who was given notice of the meeting under section 91 is present or represented at the meeting; or

(b) the chairperson of the meeting certifies in writing that an amendment is to correct minor errors or is otherwise not material.

Conduct of administration

Meetings of creditors

95. (1) The administrator shall call a meeting of creditors if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Insolvency Rules by 10% in value of the creditors of the company.

Administrator's duty to keep accounting records

96. (1) An administrator shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions of the company in administration.

(2) The administrator shall retain the accounting records kept under subsection (1) for a period of not less than six years after the termination of the administration.

(3) An administrator who contravenes this section commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of three years or to a fine of $100,000 or to both.

Preparation and provision of regular accounts and reports

97. (1) An administrator shall prepare—

(a) accounts of the receipts and payments of the company in administration; and

(b) a report on the progress of the administration,

covering the periods specified in subsection (2).

(2) The accounts and report prepared under subsection (1) shall cover—

(a) the period of six months following the administrator's appointment;

(b) each subsequent period of six months; and

(c) on ceasing to act as administrator—

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he acted as administrator for less than six months from the date of appointment, to the date the administrator ceased to act; and

(ii) the period from the date of appointment to the date the administrator ceased to act, unless prepared in accordance with subparagraph (i).

(3) An administrator shall, within sixty days of the last day of the period covered by the accounts and report—

(a) file a copy of the accounts and report with the Court and with the Registrar;

(b) send a copy of the accounts and report to each member of the creditors' committee, if any; and

(c) if the company is or at any time has been a licensee, file a copy of the accounts and report with the Commission.

(4) An administrator who contravenes this section commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Removal, resignation, remuneration and release of administrator

Removal and resignation of administrator

98. (1) The Court may, on the application of the creditors' committee, a creditor or the Official Assignee or on its own motion, remove an administrator from office.

(2) An administrator—

(a) may resign in such circumstances as may be prescribed or with the leave of the Court; and

(b) shall resign on ceasing to be an eligible insolvency practitioner.

(3) An administrator ceases to hold office with effect from the date that an administration order is discharged, unless the administrator has previously resigned or been removed from office in accordance with this section.

Appointment of replacement administrator

99. (1) If the administrator is removed from office or resigns in accordance with section 98 or dies, and a replacement administrator is not appointed, the Court on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one administrator remaining in place, may appoint an eligible insolvency practitioner as a replacement administrator; or

(b) if the administrator who has died or is removed or resigned was the sole administrator of the company, shall appoint an eligible insolvency practitioner as a replacement administrator.

(2) An application under subsection (1) may be made—

(a) by a continuing administrator;

(b) by the creditor's committee, if any;

(c) if there is no administrator or no creditor's committee, by the company in administration, the directors of the company or a creditor of the company; or

(d) by the Official Assignee.

(3) The provisions of this Ordinance and the Insolvency Rules applicable to giving notice of and advertising an administration order apply to an order of the Court filling a vacancy under subsection (1).

Remuneration of administrator

100. (1) The administrator is entitled to receive remuneration for his services as administrator and to be reimbursed expenses properly incurred for the purposes of the administration.

(2) The remuneration payable to an administrator shall be fixed applying the principles set out in section 464.

Administrator has charge over assets of company

101. (1) In this section and section 102, "cessation" means the time when the administrator ceases to be administrator.

(2) The administrator and any former administrator have the following charges on the assets of the company in his possession or control or, in the case of a former administrator, that were in his possession or control immediately before cessation—

(a) a first ranking charge for any sums payable in respect of debts or liabilities arising out of contracts that the administrator or a predecessor entered into before cessation; and

(b) a second ranking charge for remuneration due and properly incurred expenses.

(3) Subject to subsection (4), the charges specified in subsection (2)—

(a) rank in priority to any floating charge to which the assets of the company may be subject; and

(b) continue to subsist after the termination of the administration.

(4) If a debenture or other instrument creates a fixed charge and a floating charge over the assets of a company, subsection (2)*(a)* does not apply to any assets of the company that are subject to the fixed charge.

Charge in relation to contracts of employment

102. (1) In respect of contracts of employment, section 101(2)*(a)* only applies to a liability for wages or salary—

(a) arising out of a contract of employment which was adopted by the administrator or a predecessor before cessation; and

(b) which is in respect of services rendered wholly or partly after the adoption of the contract.

(2) For the purposes of subsection **.** (1—

(a) action taken or omitted to be taken within the period of fourteen days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) an administrator is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within fourteen days after the date of his appointment.

(3) Section 101(2)*(a)* does not apply to that part of the liability for wages or salary representing payment in respect of services rendered before the adoption of the contract of employment.

Administrator's duties on vacating office

103. A person who ceases to hold office as administrator in circumstances where the administration is not terminated, shall as soon as reasonably practicable deliver up to the continuing administrator or any successor administrator—

(a) the assets of the company, after deduction of any expenses properly incurred;

(b) the records of, and relating to, the administration; and

(c) the company's books, papers and other records.

Release of administrator

104. (1) A person who ceases to be the administrator of a company may apply to the Court for an order of release and the Court may grant the release unconditionally, or upon such conditions as it considers proper, or it may withhold the release.

(2) If the Court withholds the release, it may make a compensation order against the person under section 266.

(3) An administrator who dies is released with effect from the date that the death is notified to the Court in accordance with the Insolvency Rules.

(4) Subject to subsection (6), an order of release discharges the person from all liability for any act or omission by the person as administrator in relation to the administration of the company.

(5) An order of release may be revoked by the Court only if the release was obtained by fraud or the suppression or concealment of any material fact.

(6) Subsection (4) does not prevent the Court from making an order under section 266 against a former administrator who has been released under this section.

(7) A person who obtains an order of release under this section shall file a notice with the Registrar.

Miscellaneous

Application to Court on grounds of unfair prejudice

105. (1) At any time when an administration order is in force, an application to the Court may be made by a creditor or member of a company or, if the company is or at any time has been a licensee by the Commission, for an order under subsection (2) on one or both of the following grounds—

(a) that the company's affairs, business and assets are being, or have been, managed by the administrator in a manner which unfairly prejudices the interests of the member or creditor; or

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

(2) Subject to subsections (3) and (4), if it is satisfied as to either of the grounds specified in subsection (1), the Court may—

(a) make such order as it considers appropriate for giving relief in respect of the matters complained of;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make an interim or any other order that it considers appropriate.

(3) An order under subsection (2) shall not prejudice or prevent—

(a) the implementation of proposals approved by the creditors under section 93; or

(b) if the application for the order was made more than twenty-eight days after the approval of any proposals or revised proposals under section 93 or 94, the implementation of those proposals or revised proposals.

(4) Without limiting subsection (2), an order under that subsection may—

(a) regulate the management by the administrator of the company's affairs, business and assets;

(b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he has omitted to do;

(c) require that a meeting of creditors or members is called for the purpose of considering such matters as the Court may direct; and

(d) discharge the administration order and make such consequential provision as the Court considers appropriate.

(5) Section 84 is not to be taken as prejudicing an application to the Court under this section.

Notice to Commission if company a licensee

106. If a company in administration is or at any time has been a licensee—

(a) every notice or other document required to be sent to a creditor of the company under this Part shall also be sent to the Commission; and

(b) notice shall be given to the Commission of any application to the Court under this Part in respect of the company.

Notification of administration on public documents

107. (1) If a company is in administration, the company's internet site, if any, and every document to which subsection (2) applies, shall—

(a) contain a statement that the company is in administration; and

(b) specify the name of the administrator.

(2) Subsection (1) applies to—

(a) every public document issued by or on behalf of the company; and

(b) every public document issued by or on behalf of the administrator of the company on which the name of the company appears.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) If subsection (1) is contravened each officer or administrator of the company who, without reasonable excuse, causes, permits or acquiesces in the contravention, commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

PART V

RECEIVERSHIP

Preliminary

Scope of this Part

108. (1) This Part applies to a receiver appointed with respect to the assets, or part of the assets, of a company—

(a) by the Court;

(b) under a debenture or other instrument; or

(c) under or in accordance with any other law,

and unless the context otherwise requires, a reference in this Part to a "company" is to the company in respect of whose assets a receiver is or may be appointed.

(2) Except to the extent that this Part otherwise provides or the context otherwise requires—

(a) sections 109 to 132 apply to a receiver of any kind, including an administrative receiver;

(b) sections 133 to 135 apply to a receiver appointed out of court; and

(c) sections 136 to 144 apply to an administrative receiver.

(3) Except to the extent that this Ordinance otherwise provides, in respect of a receiver (other than an administrative receiver) appointed—

(a) by the Court; or

(b) under or in accordance with any other law,

in the event of a conflict between this Ordinance and the provisions of the other law, any rule of law or the Court Rules, the provisions of the law, rule of law or the Court Rules prevail.

Appointment of receivers

Persons not eligible for appointment

109. (1) Subject to subsection (2), the following persons are not eligible to be appointed as receiver in respect of a company and shall not accept appointment or act as the receiver of a company—

(a) a mortgagee of any assets of the company;

(b) a person who is, or within the previous two years has been—

(i) an officer or employee of a mortgagee of any assets of the company; or

(ii) a shareholder in or member of the company or a connected entity;

(c) a person who is disqualified from holding a licence under section 12(4);

(d) a person who, in an insolvency proceeding, would not be eligible to act as an insolvency practitioner in respect of the company under section 19(2);

(e) a body corporate;

(f) the Official Assignee;

(g) a person who has not attained the age of eighteen years;

(h) person who has been certified to be of unsound mind under any law in force in any country; or

(i) such other persons as may be prescribed.

(2) The Court may appoint, as a receiver other than an administrative receiver—

(a) the Official Assignee; or

(b) any other person, not being a person specified in subsection (1).

(3) A person who accepts or purports to accept appointment or acts or purports to act as a receiver contrary to subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

Joint receivers

110. (1) Unless a debenture or other instrument expressly provides otherwise, a power conferred by the debenture or other instrument to appoint a receiver includes the power to appoint—

(a) two or more joint receivers;

(b) an additional receiver to act jointly with the receiver in office; and

(c) a receiver to succeed a receiver who has vacated office.

(2) Joint receivers may act jointly or severally unless the instrument under which, or the Court order by which, they are appointed expressly provides otherwise.

(3) Unless the context otherwise requires, in this Ordinance and the Insolvency Rules, "receiver" and "administrative receiver" includes two or more persons appointed as joint receivers or joint administrative receivers, as the case may be.

Notice of appointment

111. A receiver shall—

(a) give notice to the Registrar and to such other persons as may be prescribed, in such manner as may be specified in the Insolvency Rules; and

(b) advertise the appointment in the prescribed manner.

Notification of receivership on public documents

112. (1) If a company is in receivership the company's internet site, if any, and every public document to which subsection (2) applies, shall contain a statement that a receiver, or an administrative receiver, has been appointed.

(2) Subsection (1) applies—

(a) if the company is in administrative receivership, to every public document—

(i) issued by or on behalf of the company; or

(ii) issued by or on behalf of the administrative receiver, on which the name of the company appears; and

(b) if a receiver is appointed in relation to a specific asset or specific assets, to every public document issued by or on behalf of the company, or the receiver, that relates to that asset or those assets.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) A person who contravenes subsection (1), or who causes, permits or acquiesces in a contravention of subsection (1), commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Duties, powers and liabilities of receiver

Receiver acts as agent of company

113. (1) A receiver appointed out of court is deemed to be the agent of the company.

(2) In the case of a receiver other than an administrative receiver, subsection (1) does not apply if the charge or instrument under which the receiver was appointed expressly provides otherwise.

(3) Subject to subsection (4), an administrative receiver is deemed to be the agent of the company, regardless of any provision to the contrary in the charge or instrument under which he was appointed.

(4) If a liquidator is appointed in respect of a company in receivership, the agency of any receiver, including an administrative receiver, terminates with immediate effect.

Powers of receiver, other than administrative receiver

114. (1) A receiver has the powers expressly or impliedly conferred—

(a) in the case of a receiver appointed out of court, by the charge or other instrument by which the receiver was appointed; or

(b) in the case of a receiver appointed by the Court, by the Court order under which the receiver was appointed.

(2) Unless the charge or other instrument under which, or Court order by which, the receiver was appointed expressly provides otherwise, a receiver may—

(a) demand and recover, by action or otherwise, income of the assets in respect of which the appointment was made;

(b) issue receipts for income recovered;

(c) manage, insure, repair and maintain the assets in respect of which the appointment was made; and

(d) exercise, on behalf of the company, a right to inspect books or documents that relate to the assets in respect of which the appointment was made that are in the possession or under the control of a person other than the company.

(3) This section does not apply to an administrative receiver.

General duties of receiver

115. (1) The primary duty of a receiver is to exercise his powers—

(a) in good faith and for a proper purpose; and

(b) in a manner that the receiver believes, on reasonable grounds, to be in the best interests of the person in whose interests the appointment was made.

(2) To the extent consistent with subsection (1), a receiver shall exercise his powers with reasonable regard to the interests of—

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which the appointment was made; and

(d) the company.

(3) If a receiver appointed out of court acts or refrains from acting in accordance with any directions given by the person in whose interests the appointment was made, the receiver is not in breach of the duty specified in subsection (1)*(b)*, but is nevertheless liable for any breach of the duties specified in subsection (1)*(a)* and subsection (2).

Duty to report to Commission

116. The receiver of a company who forms the opinion that the company is carrying on or has carried on unauthorised financial services business shall as soon as reasonably practicable report the matter to the Commission.

Powers of sale and proceeds of sale

117. (1) A receiver who exercises a power of sale of assets in respect of which the appointment was made owes a duty to—

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which the appointment was made; and

(d) the company,

to obtain the best price reasonably obtainable at the time of sale.

(2) A receiver shall keep money relating to the assets in respect of which the appointment was made separate from other money received in the course of, but not relating to, those assets and from other money that is held by the receiver or under the receiver's control.

(3) Notwithstanding any other law or rule of law to the contrary or anything contained in the debenture or other instrument by which a receiver was appointed—

(a) it is not a defence in proceedings against a receiver for a breach of the duty imposed by subsection (1) that the receiver was acting as the agent of the company or under a power of attorney from the company; and

(b) a receiver is not entitled to compensation or an indemnity from the assets in respect of which the appointment was made, or the company, in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (1).

Liability of receivers

118. (1) Subject to subsections (2) and (3), a receiver is personally liable—

(a) on any contract that the receiver enters into in the performance of his functions; and

(b) for the payment of wages or salary that, during the period of the receivership, accrue under a contract of employment adopted by the receiver in the performance of those functions.

(2) A receiver appointed out of court is not personally liable on a contract referred to in subsection (1)*(a)* to the extent that the contract excludes or limits the receiver's liability.

(3) If a receiver is appointed by the Court, other than as an administrative receiver, unless the Court orders otherwise, all contracts of employment are terminated with immediate effect and subsection (1)*(b)* does not apply.

(4) For the purposes of subsection (1)*(b)*—

(a) any action taken or omitted to be taken within the period of fourteen days after a receiver's appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) a receiver is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within fourteen days after the date of his appointment.

(5) A receiver is entitled to an indemnity in respect of any liability under subsection (1) out of the assets in respect of which the appointment was made.

(6) Nothing in this section—

(a) imposes any liability on a receiver for wages or salary in respect of services rendered prior to the commencement of the receivership;

(b) limits any right to indemnity that the receiver would have apart from this section;

(c) limits the liability of a receiver on a contract entered into without authority; or

(d) confers on a receiver a right to an indemnity in respect of his liability on a contract entered into without authority.

Payment of debts out of assets subject to floating charge

119. (1) This section applies if a receiver is appointed on behalf of the holder of a floating charge.

(2) If the company is not in liquidation, its preferential creditors shall be paid out of the assets coming into the hands of the receiver in priority to any claims for principal or interest in respect of—

(a) the debenture or other instrument under which the receiver is appointed; and

(b) any other debenture or other instrument of the company secured by a floating charge.

(3) Payments made under this section shall be recouped, as far as possible, out of the assets of the company available for payment of unsecured creditors.

Conduct of receivership

Provision of assistance to receiver

120. (1) If a receiver is appointed, the company and every officer of the company shall—

(a) make available to the receiver all books, documents and information relating to the assets in respect of which the receiver has been appointed in the possession or control of the company or officer;

(b) if required to do so by the receiver, verify by statutory declaration that the books, documents and information are complete and correct; and

(c) give the receiver such assistance as the receiver may reasonably require.

(2) On the application of the receiver, the Court may make an order requiring the company or an officer of the company to comply with subsection (1).

(3) A person who fails to comply with an order of the Court made under subsection (2) commits an offence and is liable—

(a) on summary conviction, to a fine of $50,000;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $100,000 or to both.

Accounting records

121. (1) A receiver shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to the assets in respect of which the appointment was made.

(2) The accounting records kept under subsection (1) shall be retained for a period of not less than six years after the receivership ends.

Receivership accounts to be filed with Registrar

122. (1) A receiver shall prepare accounts of the receivership receipts and payments covering the following periods—

(a) the period of twelve months following the receiver's appointment;

(b) each subsequent period of six months;

(c) if the receiver ceases to act as receiver—

(i) the period from the end of the period covered by the last accounts required to be filed under this section, or if the receiver acted for less than twelve months from the date of appointment, to the date that the receiver ceased to act; and

(ii) the period from the date of appointment to the date that the receiver ceased to act, unless filed in accordance with subparagraph (i).

(2) The accounts prepared under subsection (1) shall—

(a) comprise an abstract showing all receipts and payments during the period covered by the accounts; and

(b) within thirty days of the last day of the period covered by the accounts—

(i) be filed with the Registrar; and

(ii) if the company in receivership is or at any time has been a licensee, with the Commission.

(3) A receiver appointed by the Court shall, in addition to complying with subsection (1), file at Court accounts in such form, covering such periods and within such time as the Court may order.

(4) In the case of a receiver appointed by the Court—

(a) the obligations imposed by this section are additional—

(i) to any obligations or requirements concerning receivership accounts contained in any other law; and

(ii) to any order made with respect to receivership accounts by the Court; and

(b) the Court may set aside the application of subsections (1) and (2) to such extent and on such terms and conditions as it considers appropriate.

(5) The Registrar may, on the application of a receiver, extend the period for the filing of accounts under this section for a period of, or if the Registrar grants more than one extension, for an aggregate period not exceeding, two months.

(6) A receiver who contravenes this section commits an offence and is liable—

(a) on summary conviction, to a fine of $50,000;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $100,000 or to both.

(7) Nothing in this section affects or limits the duty of a receiver to prepare and render proper accounts imposed otherwise than by this section.

Enforcement of duty to make returns

123. (1) If a receiver—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is required to file, deliver, make or give under this Ordinance or any other law, fails to make good the default within fourteen days after the service on the receiver of a notice requiring that he do so; or

(b) being a receiver appointed out of court, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of the receivership receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to the liquidator,

the Court may, on an application being made to it, order the receiver to make good the default within such time as may be specified in the order or, in respect of a default referred to in subsection (1)*(a)*, may relieve the receiver of the obligation, in whole or in part.

(2) An application to the Court may be made—

(a) in respect of a default referred to in subsection (1)*(a)*, by—

(i) the Registrar;

(ii) a member or creditor of the company, its directors or, if appropriate, its liquidator or administrator or, if the company is or at any time has been a licensee, by the Commission; and

(b) in respect of a default referred to in subsection (1)*(b)*, by the liquidator of the company.

(3) The Court may order that the receiver pay the costs of and incidental to an application under subsection (1).

(4) This section does not affect the operation of this Ordinance or any other law that may impose penalties on receivers in respect of a default of the type referred to in subsection (1).

(5) A receiver who fails to comply with an order made under this section commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

Court directions

124. (1) On the application of a person referred to in subsection (2), the Court may, in relation to any matter arising in connection with the performance of the functions of a receiver, make one or more of the following orders—

(a) an order giving such directions as it considers appropriate;

(b) an order declaring the rights of persons before it; and

(c) such other order as it considers just.

(2) Application to the Court for an order under subsection (1) may be made by any of the following persons—

(a) the receiver;

(b) the person by whom or on whose behalf the receiver was appointed;

(c) a person in whose interest the receiver is acting; and

(d) if the company in receivership is or at any time has been a licensee, the Commission.

(3) The power of the Court to make an order under this section—

(a) is in addition to any other powers that may be exercised by the Court whether under this Ordinance or any other law or in its inherent jurisdiction;

(b) may be exercised even though the receiver may have died or ceased to act as receiver before the making of the application or the order; and

(c) includes the power to vary or amend an order that the Court has already made.

Vacation of office

Vacation of office of receiver

125. (1) The office of receiver becomes vacant if the person holding the office—

(a) dies;

(b) resigns;

(c) vacates office in accordance with subsection (2); or

(d) is removed from office in accordance with section 127.

(2) A receiver appointed out of court who ceases to be eligible to act as a receiver in accordance with section 109(1) shall vacate office forthwith.

(3) A receiver who resigns, vacates office in accordance with subsection (2) or is removed from office under section 127 shall, as soon as practicable, give notice to—

(a) the person who appointed him and any joint receiver;

(b) the company, or—

(i) if the company is in liquidation, its liquidator; and

(ii) if the company is in administration, its administrator;

(c) if there is a creditors' committee, the members of the committee;

(d) if there is no creditors' committee, the creditors.

(4) A receiver appointed by the Court who ceases to be eligible to act as a receiver in accordance with section 109(1) shall, as soon as practicable, notify the Court.

(5) A receiver who resigns, vacates office in accordance with subsection (2) or is removed from office under section 127, shall, within seven days of ceasing to hold office, give written notice to the Registrar and, if the company in respect of which the appointment was made is or at any time has been a licensee, to the Commission.

(6) A person who contravenes subsections (2), (3), (4) or (5) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to a fine of $50,000.

Resignation of receiver

126. (1) The resignation of a receiver appointed out of court is not effective unless the receiver has given not less than seven days' notice of intention to resign to—

(a) the person who made the appointment;

(b) the company in receivership, or if it is in liquidation, its liquidator; and

(c) the members of the creditors' committee, if any.

(2) Unless the Court otherwise orders, the resignation of a receiver appointed by the Court is not effective unless the receiver has given at least seven days' notice of intention to resign to the Court and to such other persons as may be specified by the Court.

(3) A notice given under subsection (1) shall state the date upon which the receiver intends the resignation to take effect.

Removal of receiver

127. (1) A receiver appointed out of court, other than an administrative receiver, may be removed—

(a) in accordance with the charge or other instrument under which the appointment was made; or

(b) by order of the Court.

(2) A receiver appointed by the Court and an administrative receiver may be removed by order of the Court, but not otherwise.

(3) Application to the Court for the removal of a receiver under subsection (1) or subsection (2) may be made by—

(a) the company, or—

(i) if the company is in liquidation, its liquidator; and

(ii) in the case of a receiver who is not an administrative receiver, if the company is in administration, its administrator;

(b) the directors of the company;

(c) the person by or on whose behalf the receiver was appointed;

(d) a creditor of the company;

(e) if the company is or at any time has been a licensee, by the Commission; or

(f) any other person who the Court is satisfied has a legitimate interest in the removal of the receiver.

(4) An application to the Court for the removal of a receiver under this section shall specify the grounds upon which the removal of the receiver is being sought and shall be served on the receiver at least five business days prior to the date fixed for the hearing of the application.

Receiver's duties on vacating office

128. (1) A person who vacates the office of receiver shall provide such information and give such assistance in the conduct of the receivership as is reasonably required by any remaining joint receiver or a successor receiver.

(2) If a person vacating the office of receiver fails to provide information or give assistance as required under subsection (1) the Court may, on the application of the remaining joint receiver or successor, order the person vacating office to provide such information and give such assistance as is reasonably required within such time as is specified in the order.

(3) A person who fails to comply with an order made under subsection (2) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

Remuneration and expenses of receivers

129. (1) Subject to section 130, a receiver appointed under a debenture or other instrument is entitled to be paid remuneration for his services—

(a) in accordance with the terms of that debenture or other instrument; or

(b) as agreed with the person on whose behalf the appointment was made.

(2) A receiver appointed by the Court or in accordance with any other law is entitled to be paid such remuneration as the Court may order or the other law may provide for.

(3) A receiver is entitled to be reimbursed for properly incurred receivership expenses.

(4) If a receiver vacates office, unless the Court otherwise orders—

(a) the receiver's remuneration and properly incurred expenses; and

(b) any indemnity to which the receiver is entitled out of the assets of the company,

shall be charged on and paid out of any assets of the company that are in his custody or under his control at that time in priority to any security interest held by the person by or on whose behalf the receiver was appointed.

Court review of remuneration

130. (1) On the application of a person referred to in subsection (2), the Court may review and by order fix the amount paid or to be paid by way of remuneration to a receiver in accordance with section 129 or the expenses reimbursed or to be reimbursed.

(2) An application to the Court for an order under subsection (1) may be made by any of the following persons—

(a) the receiver;

(b) the company, or—

(i) if the company is in liquidation, its liquidator; and

(ii) if the company is in administration, its administrator;

(c) a person claiming through the company an interest in the assets in respect of which the receiver was appointed; and

(d) if the company is or at any time has been a licensee, the Commission.

(3) Subject to subsection (4), the Court's power under this section—

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

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

(c) extends to requiring the receiver or the receiver's personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by a receiver as remuneration exceeds that fixed by the Court for the period concerned.

(4) The power conferred by subsection (3)*(c)* may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(5) In fixing the remuneration of a receiver under this section, the Court shall apply the general principles specified in section 464.

Completion of receivership

131. On the completion of the receivership, a receiver shall forthwith—

(a) give notice to—

(i) the company, or if the company is in administration or liquidation, the administrator or liquidator;

(ii) in the case of an administrative receiver, the creditors' committee, if any; and

(iii) if the company is or at any time has been a licensee, the Commission; and

(b) file a notice of completion with the Registrar and, if the company is or at any time has been a licensee, with the Commission.

Release of Court appointed receiver

132. (1) If the appointment of a receiver appointed by the Court is discharged, the former receiver may apply to the Court for an order of release and the Court may grant the release unconditionally or upon such conditions as it considers proper, or it may withhold the release.

(2) If the Court withholds the release, it may make a compensation order against the former receiver under section 266.

(3) A receiver appointed by the Court who dies is released with effect from the date that the death is notified to the Court in accordance with the Insolvency Rules.

(4) Subject to subsection (6), an order of release discharges the person from all liability for any act or omission by the person as receiver in relation to the receivership.

(5) An order for the release of a receiver under subsection (1) may be revoked by the Court only if the release was obtained by fraud or the suppression or concealment of any material fact.

(6) Subsection (4) does not prevent the Court from making an order under section 266 against a receiver who has been released under this section.

(7) A receiver who obtains an order of release under this section shall file a notice of release with the Registrar.

Receivers appointed out of Court

Appointment

133. (1) The appointment of a receiver out of court shall be made in writing.

(2) Subject to subsection (3), the appointment of a receiver out of court takes effect from the time at which the receiver receives the written notice of appointment.

(3) The appointment of a receiver out of court is not effective unless the receiver accepts it in accordance with the Insolvency Rules before the end of the next business day following the day on which the receiver receives the written appointment.

(4) If two or more joint receivers are appointed out of court—

(a) the joint appointment takes effect from the time that all joint receivers receive the written appointment; and

(b) the joint appointment is not effective unless each receiver accepts the appointment in accordance with the Insolvency Rules.

Execution of documents

134. If a receiver appointed out of court, other than an administrative receiver, is authorised to execute documents in the name of or on behalf of a company, whether under a power of attorney or otherwise, that authority continues in respect of documents necessary or incidental to the receiver's powers even though the company may go into liquidation.

Invalid appointment

135. (1) If the appointment of a person as a receiver appointed out of court is invalid the Court may, if it is satisfied that the receiver acted honestly and reasonably, order the person by whom or on whose behalf the receiver was appointed to indemnify the receiver against any liability which arises solely by reason of the invalidity of the appointment.

(2) The Court may exercise its powers under subsection (1) subject to such terms and conditions as it considers appropriate.

Administrative receivers

Meaning of "administrative receiver"

136. (1) In this Ordinance, "administrative receiver" means a receiver of the whole, or substantially the whole, of the business, undertaking and assets of a company—

(a) appointed out of court by or on behalf of the holder of a debenture or other instrument of the company secured by a floating charge, whether or not that debenture or other instrument is also secured by one or more other security interests; or

(b) appointed by the Court as an administrative receiver under section 137.

(2) If two or more persons have the right, under different instruments, to appoint an administrative receiver—

(a) each may appoint an administrative receiver, but only one administrative receiver may act in relation to the company at any time; and

(b) the administrative receiver appointed on behalf of the person whose security interest ranks highest in priority, is entitled to act as administrative receiver.

Appointment of administrative receiver by Court

137. (1) If the Court appoints a receiver who would, had the receiver been appointed out of Court, be an administrative receiver, the Court may, in the order under which the receiver is appointed, specify that the receiver is an administrative receiver.

(2) If the Court appoints a receiver as an administrative receiver under subsection (1), unless and to the extent that the Court otherwise orders or that this Ordinance provides to the contrary, the provisions of this Ordinance that apply to administrative receivers apply to that receiver.

(3) The Court shall not appoint a receiver as an administrative receiver if there is an administrative receiver acting in relation to the company.

Powers of administrative receiver

138. (1) Notwithstanding any provision in the articles of the company in receivership, an administrative receiver may, unless the debenture or other instrument by which he was appointed provides otherwise—

(a) execute all documents necessary or incidental to the exercise of his powers in the name of and on behalf of the company in receivership; and

(b) use the company's seal.

(2) Unless and to the extent that the debenture or other instrument by which an administrative receiver is appointed provides otherwise, the powers conferred on an administrative receiver of a company by the debenture or other instrument by which the appointment was made include the powers specified in Schedule 1.

(3) A person dealing with the administrative receiver of a company in good faith and for value is not concerned to enquire whether the receiver is acting within his powers.

Order authorising disposal of charged assets

139. (1) In this section, "relevant assets", in relation to an administrative receiver, means the assets of which the receiver is or, but for the appointment of some other person as the receiver of part of the company's assets, would be the receiver.

(2) If on an application by an administrative receiver, the Court is satisfied that there is a reasonable prospect that the disposal, with or without other assets, of any relevant assets which are subject to a security interest would promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the assets as if they were not subject to the other security interest.

(3) Subsection (2) does not apply in the case of any security interest held by the person by or on whose behalf the administrative receiver was appointed, or of any security interest to which a security interest so held has priority.

(4) It is a condition of an order made under subsection (2) that—

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on the sale of the assets in the fair market by a willing vendor (the fair market value), such sums as may be required to make good the deficiency,

shall be applied towards the sums secured by the security interest.

(5) If a condition imposed pursuant to subsection (4) relates to two or more security interests, that condition shall require the net proceeds of the disposal and, if subsection (4)*(b)* applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those security interests in the order of their priorities.

(6) The administrative receiver shall—

(a) forthwith give notice of the hearing of an application under subsection (2) to the holder of the security interest; and

(b) if an order is made under this section, forthwith serve a sealed copy of the order on the holder of the security interest.

Review of fair market value

140. (1) If, following the disposal of assets in accordance with an order under section 139, section 139(4)*(b)* applies, the administrative receiver, or any person to whom sums are to be paid under that provision, may apply to the Court for a review of the Court's determination as to the fair market value of the assets.

(2) On an application made under subsection (1), the Court may make a fresh determination as to the fair market value of the assets disposed of and section 139(4) and (5) shall apply with the new fair market value substituted for the original fair market value.

(3) An application under subsection (1) shall be made—

(a) in the case of the administrative receiver, within fourteen days of the date of the disposal of the assets; or

(b) in the case of a person other than the administrative receiver, within fourteen days of the date that the person is notified by the administrative receiver of the sale.

Filing Court order

141. (1) The administrative receiver shall file a copy of an order made under section 139(2) or section 140(2) with the Registrar within fourteen days of the date of the order.

(2) An administrative receiver who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Statement of affairs

142. An administrative receiver shall, as soon as practicable after appointment, by notice, require one or more relevant persons to prepare and submit to him a statement of affairs of the company in administrative receivership.

Report by administrative receiver and creditors' meeting

143. (1) An administrative receiver shall, within three months of appointment, prepare and file with the Registrar and, if appointed by the Court, with the Court, a report as to—

(a) the events leading up to his appointment;

(b) the disposal or proposed disposal of any assets of the company and the carrying on of any business of the company;

(c) the amounts of principal and interest payable to the person by whom or on whose behalf the appointment was made and the amounts payable to preferential creditors;

(d) the amount, if any, likely to be available for the payment of other creditors; and

(e) the persons who have submitted statements of affairs under section 142.

(2) A report prepared under subsection (1) shall—

(a) contain such other information as may be prescribed; and

(b) include summaries of the statements of affairs submitted to the administrative receiver together with his comments on them.

(3) The administrative receiver shall, within fourteen days of filing the report prepared under subsection (1) with the Registrar—

(a) send a copy of the report to—

(i) the company in receivership or, if it is in liquidation, its liquidator; and

(ii) if the company is or at any time has been a licensee, to the Commission;

(b) either send a copy of the report to each creditor of the company or publish a notice stating the address of an office to which creditors of the company may write for a copy of the report and at which the report can be inspected during normal office hours; and

(c) call a meeting of unsecured creditors.

(4) The administrative receiver may omit from the report information if the administrative receiver is satisfied that the disclosure of the information in the report would seriously prejudice the carrying out of the functions of the administrative receiver.

(5) If a liquidator is appointed after the administrative receiver has sent a copy of the report to the company under subsection (3)*(a)*, within seven days of the date of appointment of the liquidator, the administrative receiver shall send a copy of the report to the liquidator.

(6) This section does not apply to a receiver appointed—

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act,

if subsections (1), (3) and (5) have been complied with by the existing administrative receiver or by the predecessor to the administrative receiver.

(7) An administrative receiver who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment, to a fine of $25,000.

Application for permission not to call meeting of creditors

144. (1) An administrative receiver may apply to the Court for an order that a meeting of creditors need not be called under section 143(3) and, subject to subsection (2), the Court may make such an order subject to such terms as it considers appropriate.

(2) The Court shall not make an order under subsection (1) unless—

(a) the administrative receiver has stated in the report prepared under section 143(1) the intention to apply for the order;

(b) the report has been sent to the persons referred to in section 143(3)*(a)* not less than fourteen days prior to the date of the hearing of the application; and

(c) if the administrative receiver publishes a notice under section 143(3)*(b)*, the notice stated the intention to apply for the order.

PART VI

LIABILITIES, DEBTS AND CLAIMS

Preliminary

Scope of this Part

145. (1) This Part applies to the liquidation of a company and the bankruptcy of an individual.

(2) For the purposes of this Part, "debtor" means a company in liquidation or an individual in bankruptcy.

Claims in a liquidation or bankruptcy

Admissible claims

146. (1) Subject to subsection (3), the following liabilities are admissible claims in the liquidation of a company or in the bankruptcy of an individual—

(a) any liability to which the company or individual is subject at the relevant time;

(b) any liability to which the company or individual may become subject after the relevant time by reason of any obligation incurred before that time; and

(c) any interest that may be claimed in accordance with this Ordinance or the Insolvency Rules.

(2) A liability in tort is an admissible claim in the liquidation of a company or in the bankruptcy of an individual if—

(a) the cause of action has accrued at the relevant time; or

(b) all the elements necessary to establish the cause of action exist at the relevant time, except for actionable damage.

(3) The Insolvency Rules may prescribe liabilities that are not admissible claims in the liquidation or a company or the bankruptcy of an individual.

Postponed claims

147. (1) The following liabilities are postponed claims—

(a) in the liquidation of a company, any fine imposed for an offence;

(b) in the liquidation or a company or the bankruptcy of an individual—

(i) a liability that, under this Ordinance or any other law, is of a type that is required to be postponed; and

(ii) such other liabilities as may be prescribed as postponed claims.

(2) A liability that is a postponed claim is not an admissible claim until all other admissible claims have been paid in full.

Quantification of claims in liquidation and bankruptcy

148. (1) This section applies to the quantification of a claim in the liquidation of a company or the bankruptcy of an individual.

(2) The amount of a claim shall be quantified as at the relevant time.

(3) If a claim is subject to a contingency or, for any other reason, the amount of the claim is not certain, the liquidator, or the bankruptcy trustee, shall—

(a) agree an estimate of the value of the claim as at the relevant time; or

(b) apply to the Court to determine the amount of the claim.

(4) On an application by the liquidator or the bankruptcy trustee under subsection (3)*(b)*, the Court may—

(a) determine the amount of the claim itself; or

(b) determine a method to be used by the liquidator or the trustee for calculating the amount of the claim.

(5) In the case of rent and other payments of a periodic nature, a claim may include any amounts due and unpaid at the relevant time and if, at the relevant time, a payment was accruing due, the claim may include so much as would have fallen due at that time if the liability had been accruing from day to day.

(6) A claim based on a liability that, at the relevant time, was not payable by the company until after the relevant time shall be discounted in accordance with the Insolvency Rules.

(7) Interest may be included in a claim as provided by section 149.

Interest on claims

149. (1) Subject to sections 215 and 382, a claim in the liquidation of a company or the bankruptcy of an individual shall not include an amount for interest in respect of a period after the relevant time.

(2) If it was agreed between the debtor and a creditor that the debt on which the creditor's claim is based would bear interest, the claim may include interest, at the agreed rate, up to the relevant time.

(3) A claim made by a creditor other than one referred to in subsection (2) may include interest up to the relevant time—

(a) if the debt on which the claim is based is due by virtue of a written instrument and was payable at a certain time before the relevant time; or

(b) if, before the relevant time, the creditor made a written demand on the debtor and the demand stipulated that interest would be payable on the debt from the date of the demand until payment of the debt.

(4) The amount of interest that may be included in a claim under this section is—

(a) in the case of a debt referred to in subsection (3)*(a)*, interest at the judgment rate for the period from the date that the debt was payable to the relevant time; and

(b) in the case of a debt referred to in subsection (3)*(b)*, interest at the judgment rate for the period from the date of the written demand to the relevant time.

Claim in currency other than dollars

150. (1) The amount of a claim based on a liability incurred or payable in a currency other than dollars shall be converted into dollars at the rate of exchange prevailing at the relevant time.

(2) For the purposes of subsection (1), the rate of exchange should be ascertained in such manner as may be prescribed.

Set-off

Insolvency set-off

151. (1) This section applies if, before the relevant time, there have been mutual credits, mutual debts or other mutual dealings between a debtor and a creditor claiming or intending to claim for a debt in the liquidation of a company or the bankruptcy of an individual.

(2) If this section applies, subject to section 152 and subsections (3) to (6)—

(a) an account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sum due from one party shall be set-off against the sums due from the other party; and

(b) only the balance, if any, of the account owed—

(i) to the creditor may be claimed in the liquidation or bankruptcy; or

(ii) to the debtor shall be paid to the liquidator, or bankruptcy trustee, as part of the assets of the debtor.

(3) If all or part of the balance referred to in subsection (2)*(b)*(ii) as owed to the debtor results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, is payable if and when the debt becomes due and payable.

(4) A sum shall be regarded as being due to or from the debtor for the purposes of subsection (2) if it constitutes a liability within the meaning of section 3.

(5) Sections 148, 149 and 150 apply, as appropriate, for the purposes of this section to—

(a) any obligation to or from the debtor which, because it is a contingency or for any other reason, it does not bear a certain value; or

(b) any sums due to the debtor which—

(i) are of a periodical nature;

(ii) bear interest; or

(iii) are payable in a currency other than dollars.

(6) The provisions of the Insolvency Rules concerning debts payable at a future time apply for the purposes of this section to any sum due to or from the debtor which is payable in the future.

Exclusions from section 151

152. (1) Section 151 does not apply to—

(a) any debt arising out of an obligation incurred at a time when, in the case of a company, the creditor had notice that—

(i) an application to the Court for the appointment of a liquidator was pending; or

(ii) a meeting of the members had been called to consider the appointment of a liquidator under section 159;

(b) any debt arising out of an obligation incurred at a time when, in the case of an individual, the creditor had notice that an application had been made to the Court for a bankruptcy order against the individual;

(c) any debt arising out of an obligation if, in the case of a company—

(i) the liquidation was immediately preceded by an administration; and

(ii) at the time the obligation was incurred the creditor had notice that an application to the Court for an administration order was pending;

(d) in the case of a company, any debt arising out of an obligation incurred during an administration which immediately preceded the liquidation; or

(e) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party if that agreement was entered into—

(i) after the commencement of the liquidation or bankruptcy;

(ii) in the case of a company, at a time when the creditor had notice of a matter specified in subsection (1)*(a)*(i) or (ii);

(iii) in the case of an individual, at a time when the creditor had notice that an application had been made to the Court for a bankruptcy order against the individual;

(iv) in the case of a company, if the liquidation was immediately preceded by an administration, at a time when the creditor had notice that an application for an administration order was pending; or

(v) during an administration which immediately preceded the liquidation.

(2) If, before the relevant time, a creditor waives or agrees not to claim the benefit of a set-off under section 151, that waiver or agreement takes effect notwithstanding that section, except to the extent that a creditor who was not a party to the agreement, or has not agreed otherwise, is prejudiced.

Validity of agreements to subordinate debt

153. If, before the relevant time, a creditor acknowledges or agrees, in the event of a shortfall of assets, to accept a lower priority in respect of a debt than that which the creditor would otherwise have under this Ordinance, that acknowledgement or agreement takes effect notwithstanding this Ordinance, except to the extent that a creditor of the debtor who was not a party to the agreement is prejudiced.

Netting agreements

154. The Insolvency Rules may provide for the treatment of netting agreements in the liquidation of a company and the bankruptcy of an individual.

Statutory demand

Statutory demand

155. (1) In this section and section 157, "prescribed minimum" means the sum prescribed as the minimum amount of the debt for which a statutory demand may be issued.

(2) A creditor may serve a demand on a person for payment of a debt owed to the creditor by that person.

(3) A statutory demand shall—

(a) be in respect of a debt that is due at the time of the demand, the amount of which is not less than the prescribed minimum;

(b) be in writing and shall specify the nature of the debt and its amount;

(c) be dated and shall be signed by the creditor or by a person authorised to make demand on the creditor's behalf;

(d) require the person to pay the debt or to secure or compound for the debt to the reasonable satisfaction of the creditor within twenty-one days of the date of service of the demand;

(e) state that if the demand is not complied with, application may be made to the Court for the appointment of a liquidator or for a bankruptcy order, as the case may be;

(f) set out the rights of the person to make application to set the demand aside under section 156; and

(g) comply with, and be served in accordance with, the Insolvency Rules.

(4) If the creditor making demand under subsection (1) is a secured creditor in respect of the debt, the full amount of the debt shall be specified in the demand, but—

(a) the demand shall specify the nature of the security interest, and the value which the creditor places on it at the date of the demand; and

(b) the amount claimed—

(i) shall be the full amount of the debt less the amount specified as the value of the security interest; and

(ii) must equal or exceed the prescribed minimum.

Application to set aside statutory demand

156. (1) A person who has been served with a statutory demand may apply to the Court for an order setting it aside.

(2) An application under subsection (1) shall be made within twenty-one days of the date of service of the demand on the person.

(3) The Court is not to extend the time for making an application to set aside a statutory demand.

(4) A person applying to set aside a statutory demand under this section shall give seven days' notice of the hearing to the creditor or, if a person is named in the demand as the person with whom communications in respect of the demand should be made, to that person.

(5) If a person makes an application under this section, the time for compliance with the requirements of the statutory demand is extended until—

(a) the date on which the application is determined; or

(b) such later date as the Court may fix under section 157(5).

Hearing to set aside statutory demand

157. (1) The Court shall set aside a statutory demand if it is satisfied that—

(a) there is a substantial dispute as to whether—

(i) the debt; or

(ii) a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum,

is owing or due;

(b) the person on whom the statutory demand was served has a reasonable prospect of establishing a set-off, counterclaim or cross claim in an amount equal to or greater than the amount specified in the demand less the prescribed minimum; or

(c) the creditor holds a security interest in respect of the debt claimed and the value of the security interest is equal to or greater than the amount specified in the demand less the prescribed minimum.

(2) If the Court is satisfied that the amount of the creditor's debt is less than the amount specified in the statutory demand, but it equals or exceeds the prescribed minimum, it may make an order—

(a) varying the demand to show the amended debt; and

(b) declaring the demand to have had effect, as varied, as from the date of service of the demand.

(3) If the Court is satisfied that the security interest of a secured creditor has been under-valued in the statutory demand, the Court may require the creditor to amend the demand accordingly, but without prejudice to the right of the creditor to make application for the appointment of a liquidator or for a bankruptcy order, as the case may be.

(4) The Court may set aside a statutory demand if it is satisfied that substantial injustice would otherwise be caused—

(a) because of a defect in the demand, including a failure to comply with section 155(3); or

(b) for some other reason.

(5) If, on hearing an application to set aside a statutory demand, the Court is satisfied that there are no grounds for setting aside the statutory demand, the Court shall dismiss the application but may extend the time for compliance with the statutory demand.

(6) Having considered the evidence before it on a hearing under this section, the Court may either summarily determine the application or adjourn it giving such directions as it considers appropriate.

PART VII

LIQUIDATION OF COMPANIES

Preliminary

Commencement and duration of liquidation

158. (1) A company is put into liquidation by the appointment of a liquidator.

(2) A liquidator may be appointed in respect of a company only by—

(a) the members of the company under section 159; or

(b) the Court under section 170.

(3) The liquidation of a company commences at the time at which the liquidator is appointed and continues until it terminates in accordance with section 231.

Appointment of liquidator by members

Members' resolution

159. (1) Subject to this section, the members of a company may, by qualifying resolution, appoint an eligible insolvency practitioner as liquidator of the company.

(2) The members of a company may not appoint a liquidator of the company if—

(a) an application to the Court to appoint a liquidator has been filed and served but not yet determined;

(b) a liquidator has been appointed by the Court; or

(c) the person to be appointed liquidator has not consented in writing to the appointment.

(3) The members of a company that is a licensee may not appoint a liquidator of the company unless at least seven business days written notice of the resolution, or such shorter period as the Commission may accept in writing, has been given to the Commission.

(4) Any resolution of the members that purports to appoint a liquidator contrary to this section is void and of no effect.

(5) The acts of a liquidator appointed in breach of subsection (2)*(a)* are valid provided that the liquidator is not aware of the breach and the acts are carried out in good faith.

Notice to liquidator

160. (1) If the members appoint a liquidator under section 159, the company shall, as soon as practicable, give the liquidator notice of the appointment.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Appointment of liquidator by the Court

Grounds for appointment of liquidator of company

161. (1) The Court may appoint the Official Assignee or an eligible insolvency practitioner as the liquidator of a company if—

(a) the company is insolvent;

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(c) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(c)*—

(a) the "public" includes the public within and outside the Islands; and

(b) the preservation of the reputation of the Islands is a matter of public interest.

Applicants for order appointing liquidator of company

162. (1) Subject to this section, any one or more of the following may apply to the Court for the appointment of a liquidator of a company—

(a) the company;

(b) a creditor;

(c) a member;

(d) the directors;

(e) a director;

(f) the Attorney General under section 164;

(g) the Commission under section 164;

(h) if the company is in administration, the administrator under section 71;

(i) the administrative receiver of the company; or

(j) the supervisor of a company arrangement in respect of the company.

(2) If a company arrangement has terminated, the person who, immediately before the termination of the arrangement, was the supervisor is treated as the supervisor for the purposes of this section.

(3) If an order is made at a time when a company arrangement is in force in respect of the company, the Court may appoint the supervisor of the arrangement as liquidator of the company.

(4) An applicant may, in his application under this section, propose an eligible insolvency practitioner as liquidator of the company.

(5) An application for the appointment of a liquidator may not be withdrawn except with the leave of the Court.

Restrictions on applications

163. (1) An application for the appointment of a liquidator may be made by a director only on the ground that the company is insolvent.

(2) The leave of the Court is required for an application by—

(a) a director; or

(b) a member, if the ground for the application is the company's insolvency.

(3) The Court shall not grant leave to a director, or to a member on the ground of the company's insolvency, unless the Court is satisfied that there is a *prima facie* case that the company is insolvent.

(4) An application to appoint a liquidator on the public interest ground may only be made by the Attorney General or the Commission under section 164.

Application by the Attorney General or the Commission

164. (1) The Attorney General may apply to the Court for the appointment of a liquidator of a company on the public interest ground.

(2) The Commission may make application to appoint a liquidator of a company only—

(a) if the company—

(i) is or at any time has been a licensee; or

(ii) is carrying on, or at any time has carried on, unauthorised financial services business; and

(b) on the grounds that the company is insolvent or that it is in the public interest for a liquidator to be appointed.

Advertisement of application

165. (1) Unless the Court otherwise orders, an application for the appointment of a liquidator shall be advertised in accordance with the Insolvency Rules—

(a) if the company is the applicant, not less than seven days before the date set for the application to be heard; or

(b) if the company is not the applicant, not less than seven days after service of the application on the company and not less than seven days before the date set for the application to be heard.

(2) If the application is not advertised in accordance with this section and the Insolvency Rules, the Court may dismiss it.

Substitution of applicant

166. The Court may, by order, substitute as applicant in an application for the appointment of a liquidator, a creditor or member who is entitled to make such an application if—

(a) the applicant applies to withdraw the application or consents to it being dismissed;

(b) the Court considers that the application is not being diligently proceeded with;

(c) the applicant is not entitled to make the application; or

(d) the Court for any other reason considers it appropriate to do so.

Period within which application shall be determined

167. (1) Subject to subsection (2), an application for the appointment of a liquidator shall be determined within six months after it is filed.

(2) The Court may, upon such conditions as it considers appropriate, extend the period referred to in subsection (1) for one or more periods not exceeding three months each if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

(4) Section 475(1) shall not apply to the time periods specified in this section.

Restrictions on company's opposition to application

168. (1) In so far as an application for the appointment of a liquidator on the grounds that it is insolvent relies on a failure by the company to comply with a statutory demand, the company may not, without the leave of the Court, oppose the application on a ground—

(a) that the company relied on for the purposes of an application by it for the demand to be set aside; or

(b) that the company could have so relied on, but did not so rely on (whether it made such an application or not).

(2) The Court shall not grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the company is solvent.

Power to stay or restrain proceedings

169. If an application for the appointment of a liquidator or provisional liquidator of a company has been made but not yet determined or withdrawn, the applicant or any person who is entitled to apply for the appointment of a liquidator of the company under section 162 or under any other law may—

(a) if any action or proceeding is pending against the company in the Court, the Court of Appeal or the Privy Council, apply to the Court, the Court of Appeal or the Privy Council, as the case may be, for a stay of the action or proceeding; or

(b) if any action or proceeding is pending against the company in any other court or tribunal in the Islands, apply to the Court for a stay of the action or proceeding.

Court's powers on hearing application

170. (1) On the hearing of an application for the appointment of a liquidator, the Court may—

(a) appoint a liquidator of the company on one or more of the grounds specified in section 161;

(b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers appropriate.

(2) The Court shall not refuse to appoint a liquidator of a company merely because—

(a) the assets of the company are subject to a security interest in respect of an amount equal to or greater than the value or amount of the assets;

(b) the company has no assets; or

(c) if the applicant is a member, if the order were made, no assets of the company would be available for distribution among the members.

(3) Subject to subsection (4), if an application to appoint a liquidator is made by a member on the just and equitable ground, the Court shall appoint a liquidator if it is of the opinion that—

(a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and

(b) in the absence of any other remedy it would be just and equitable to appoint a liquidator.

(4) Subsection (3) does not apply if the Court is of the opinion that—

(a) some other remedy is available to the applicant; and

(b) the applicant is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy.

(5) The Court may not appoint a liquidator of a company that is in liquidation, whether by virtue of the appointment of a liquidator—

(a) by the Court; or

(b) by a valid resolution of the members under section 159.

Provisional liquidator

Application for appointment of provisional liquidator

171. (1) If an application to the Court for the appointment of a liquidator of a company has been made but not determined or withdrawn, an application may be made to the Court for the appointment of a provisional liquidator by—

(a) the applicant for the appointment of a liquidator; or

(b) any person who is entitled to apply for the appointment of a liquidator of the company under section 162 or under any other law.

(2) An application under subsection (1) by a member or a director may only be made with the leave of the Court.

(3) On an application under subsection (1), the Court may appoint the Official Assignee or an eligible insolvency practitioner as provisional liquidator of the company if—

(a) the company, in respect of which the application to appoint a liquidator has been made, consents; or

(b) the Court is satisfied that the appointment of a provisional liquidator is—

(i) necessary for the purpose of maintaining the value of assets owned or managed by the company;

(ii) otherwise in the interests of creditors, or any class of creditors; or

(iii) in the public interest.

(4) The Court may appoint a provisional liquidator on such terms as it considers appropriate and may, as a condition precedent to the appointment, require the applicant to

deposit at Court, or otherwise secure to the satisfaction of the Court, such sum as the Court considers reasonable to cover the remuneration and expenses of the provisional liquidator.

Rights and powers of provisional liquidator

172. (1) Subject to subsection (2), a provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which the appointment was made.

(2) The Court may—

(a) limit the powers of a provisional liquidator in such manner and at such times as it considers appropriate; or

(b) give such directions to the provisional liquidator as it considers appropriate.

Remuneration of provisional liquidator

173. (1) The provisional liquidator of a company is entitled to be paid such remuneration as the Court may order applying the general principles specified in section 464 and to be reimbursed for expenses properly incurred as provisional liquidator.

(2) Subject to subsections (4) and (5), the remuneration and expenses of the provisional liquidator is payable—

(a) if a liquidator is not appointed, out of the assets of the company; or

(b) if a liquidator is appointed, as an expense of the liquidation in accordance with the prescribed priority.

(3) The Court may order the applicant for the appointment of the provisional liquidator to pay or contribute to the remuneration and expenses of the provisional liquidator if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in applying for the appointment of the provisional liquidator.

(4) If the assets of the company are not sufficient to pay the remuneration and expenses of the provisional liquidator, the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the appointment of the provisional liquidator.

(5) Unless the Court otherwise orders, if a liquidator of the company is not appointed, the provisional liquidator may retain out of the company's assets such sums or assets as are, or may be, required for meeting his remuneration and expenses.

Termination of appointment of provisional liquidator

174. (1) The Court may, on the application of the provisional liquidator or of any person specified in section 171(1) or on its own motion, terminate the appointment of a provisional liquidator.

(2) If the Court has not previously terminated the appointment of a provisional liquidator under subsection (1), it terminates on—

(a) the determination by the Court of the application to appoint a liquidator; or

(b) the Court granting the applicant leave to withdraw the application under section 162(5).

(3) On the termination of the appointment of a provisional liquidator, the Court may give such directions or make such order with respect to the accounts of his administration, or to any other matters, as it considers appropriate.

Consequences of appointment of liquidator

Effect of liquidation

175. (1) Subject to subsection (2), with effect from the commencement of the liquidation of a company—

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but cease to have any powers, functions or duties other than those required or permitted under this Part or authorised by the liquidator;

(c) no alteration may be made in the status of or to the rights or liabilities of a member, whether by an amendment of the articles or otherwise;

(d) no member may exercise any power under the articles, or otherwise, except for the purposes of this Ordinance;

(e) no amendment may be made to the articles of the company; and

(f) unless the Court otherwise orders—

(i) no person may commence or proceed with any action or legal proceeding against the company or in relation to its assets;

(ii) no person may exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the company; and

(iii) no share in the company may be transferred.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

Remuneration of supervisor under a company arrangement

176. If a liquidator of a company is appointed and, at the date that the application was filed, a company arrangement was being supervised by a supervisor, the remuneration of the supervisor is a first charge on the assets of the company.

Restrictions on enforcement process already commenced

177. (1) Subject to subsections (2) and (3), a creditor is not entitled to retain the benefit of any execution process, sequestration, distress or attachment over or against the assets of a company in liquidation unless the execution, process or attachment is completed before—

(a) if the liquidator was appointed by the members under section 159, the earlier of—

(i) the date on which the creditor had notice of the calling of the meeting at which the resolution for the appointment of a liquidator was proposed; or

(ii) the date on which the liquidator was appointed; or

(b) if the liquidator was appointed by the Court the date on which the application to appoint the liquidator was made.

(2) A person who, in good faith and for value, purchases assets of a company—

(a) from an officer charged with an execution process; or

(b) on which distress has been levied,

acquires a good title to the assets as against the liquidator of the company.

(3) The Court may set aside the application of subsection (1) to the extent and subject to such terms as it considers appropriate.

(4) For the purposes of this section—

(a) an execution or distraint against personal property is completed by seizure and sale;

(b) an attachment of a debt is completed by the receipt of the debt; and

(c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

Duties of officer in execution process

178. (1) Subject to subsection (7), subsection (2) applies if—

(a) assets of a company are taken in an execution process; and

(b) before completion of the execution process the officer charged with the execution process receives notice that a liquidator or a provisional liquidator of a company has been appointed.

(2) In the circumstances specified in subsection (1), the officer charged with the execution process shall, on being required by the liquidator or provisional liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the liquidator or provisional liquidator.

(3) The costs of the execution process are a first charge on any asset delivered or transferred to the liquidator under subsection (2) and the liquidator or provisional liquidator may sell all or some of the assets to satisfy that charge.

(4) Subject to subsection (7), if, in an execution process in respect of a judgment for a sum exceeding the prescribed amount, assets of a company are sold or money is paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of fourteen days.

(5) An officer charged with the execution process shall deduct the costs of execution from the amount retained under subsection (3) and pay the balance to the liquidator if—

(a) within the period of fourteen days referred to in subsection (4), the officer has notice that—

(i) a meeting of the members of the company has been called at which a qualifying resolution to appoint a liquidator is to be proposed; or

(ii) an application for the appointment of a liquidator of the company has been made to the Court; and

(b) a liquidator is appointed in respect of the company.

(6) A liquidator to whom money has been paid under subsection (5) is entitled to retain it as against the execution creditor.

(7) The Court may set aside the rights conferred on a liquidator under this section to the extent and subject to such terms as it considers appropriate.

Notice of appointment and first meeting of creditors

Notice of appointment of liquidator

179. The liquidator of a company shall, within fourteen days of the date of appointment—

(a) advertise his appointment in accordance with the Insolvency Rules;

(b) file notice of his appointment with the Registrar;

(c) serve notice of his appointment on the company in respect of which the appointment was made; and

(d) if the company is or at any time has been a licensee, serve notice of the appointment on the Commission.

Liquidator to call first meeting of creditors

180. (1) Subject to section 184, the liquidator of a company shall call a meeting of the creditors of the company (the first creditors' meeting) to be held within twenty-one days of the date of his appointment—

(a) by sending a notice of the meeting to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting in accordance with the Insolvency Rules.

(2) During the period before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with—

(a) a list of the creditors of the company known to the liquidator; and

(b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors' meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.

(4) At the first creditors' meeting, the creditors may—

(a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or

(b) in the case of a liquidator appointed by the Court, resolve to make application to the Court for the appointment of another liquidator in his place; and

(c) in either case, appoint a creditors' committee.

Application to Court by members

181. If at a meeting held in accordance with section 180 the creditors appoint a liquidator in the place of the liquidator appointed by the members, a director, member or creditor of the company may apply to the Court for an order that—

(a) the person appointed by the members is appointed liquidator; or

(b) some other eligible insolvency practitioner is appointed as liquidator,

in either case, instead of or jointly with the liquidator appointed by the creditors.

Application of sections 180 and 181

182. (1) Subject to subsection (2), sections 180 and 181 do not apply to a liquidator appointed to act—

(a) jointly with an existing liquidator; or

(b) in place of a liquidator who has died or otherwise ceased to act.

(2) If the first liquidator of a company dies or ceases to act before sections 180 and 181 have been fully complied with, those sections apply to his successor and any continuing liquidator until the sections have been fully complied with.

Restrictions on powers of liquidator appointed by members

183. Notwithstanding section 187, in the case of a liquidator appointed by the members of a company, during the period before the holding of the first creditors' meeting called under section 180, the powers of the liquidator are limited to—

(a) taking into his custody and control all the assets to which the company is or appears to be entitled;

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

(c) doing all such things as may be necessary to protect the company's assets; and

(d) exercising such other of the powers conferred on a liquidator by section 187 as the Court may, on his application, sanction.

Court appointed liquidator may dispense with creditors' meeting

184. A liquidator appointed by the Court is not required to call a meeting of creditors under section 180 if the liquidator—

(a) considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;

(b) gives notice to the creditors stating—

(i) that he does not consider it necessary for a meeting to be held;

(ii) the reasons for his view; and

(iii) that a meeting will not be called unless 10% in value of the creditors give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called; and

(c) has not received a notice requiring a meeting to be held.

Liquidators

Status of liquidator

185. (1) In performing his functions and undertaking his duties under this Ordinance, a liquidator, whether appointed by resolution of the members or by the Court, acts as an officer of the Court.

(2) A liquidator is the agent of the company in liquidation.

General duties of liquidator

186. (1) The principal duties of a liquidator of a company are—

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Ordinance; and

(c) if there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Ordinance.

(2) The liquidator shall, subject to this Ordinance and the Insolvency Rules, use his own discretion in undertaking his duties.

(3) If it appears to the liquidator that the company has carried on unauthorised financial services business, the liquidator shall as soon as reasonably practicable report the matter to the Commission.

(4) A liquidator who makes a report to the Commission under subsection (3) shall—

(a) send to the Commission a copy of every notice or other document that he is required under this Part to send to a creditor or the Court; and

(b) notify the Commission of any application made to the Court in or in connection with the liquidation.

(5) A liquidator also has the other duties imposed by this Ordinance and the Insolvency Rules and such duties as may be imposed by the Court.

General powers of liquidator

187. (1) A liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator under this Ordinance and the powers conferred on him by this Ordinance.

(2) Without limiting subsection (1), a liquidator has the powers specified in Schedule 2.

(3) The Court may direct that certain powers may only be exercised with its sanction—

(a) if the liquidator is appointed by the Court, on his appointment or subsequently; or

(b) if the liquidator is appointed by the members, at any time.

(4) If a liquidator disposes of any assets of the company to a person connected with the company, he shall notify the creditors' committee, if any, of the disposition.

(5) The liquidator of a company, whether or not appointed by the Court, may at any time apply to the Court for directions in relation to a particular matter arising in the liquidation.

(6) The acts of a liquidator of a company are valid, notwithstanding any defect in his nomination, appointment or qualifications.

Removal of liquidator

188. (1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if—

(a) the liquidator—

(i) is not eligible to act as an insolvency practitioner in relation to the company;

(ii) breaches any duty or obligation imposed on him by or owed by him under this Ordinance, the Insolvency Rules or, in his capacity as liquidator, under any other law; or

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that—

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the liquidator has an interest that conflicts with his role as liquidator; or

(iii) for some other reason he should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by—

(a) the creditors' committee;

(b) a creditor of the company or, with the leave of the Court, a member of the company; or

(c) the Official Assignee.

(3) If the Court removes a liquidator from office under this section—

(a) if, following his removal, there is at least one liquidator remaining in office, the Court may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator removed was the sole liquidator of the company, the Court shall appoint the Official Assignee or an eligible insolvency practitioner as liquidator in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers appropriate.

Resignation of liquidator

189. (1) A liquidator of a company—

(a) shall resign in accordance with the Insolvency Rules if he is no longer eligible to act as an insolvency practitioner in relation to the company; but

(b) otherwise may only resign in accordance with this section.

(2) A liquidator may resign in accordance with subsection (4)—

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(3) Notwithstanding subsection (2), if joint liquidators are appointed in respect of a company, one or more of the joint liquidators may resign in accordance with subsection (4) if—

(a) all the joint liquidators are of the opinion that it is no longer necessary or expedient for the resigning liquidator or liquidators to continue in office; and

(b) at least one of them will remain in office.

(4) If the liquidator of a company intends to resign on one of the grounds referred to in subsection (2) or under subsection (3), he shall call a meeting of creditors for the purpose of accepting his resignation as liquidator.

(5) If the creditors resolve to accept the resignation of a liquidator, they may appoint an eligible insolvency practitioner as liquidator in his place.

(6) If the creditors refuse or fail to accept the resignation of the liquidator, he may apply to the Court for leave to resign in accordance with the Insolvency Rules.

(7) This section does not apply to the Official Assignee when acting as the liquidator of a company.

Appointment of replacement liquidator

190. (1) If the liquidator of a company dies or resigns under section 189 and no liquidator is appointed in his place, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one liquidator remaining in place, may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator who has died or resigned was the sole liquidator of the company, shall appoint the Official Assignee or an eligible insolvency practitioner in his place.

(2) An application under subsection (1) may be made—

(a) by any continuing liquidator;

(b) by the creditors' committee, if any; or

(c) by the Official Assignee.

(3) If the Official Assignee is the liquidator of a company, an eligible insolvency practitioner may be appointed in his place—

(a) on the application of the Official Assignee, by the Court; or

(b) with the consent of the Official Assignee, by resolution of the creditors at a meeting called by the Official Assignee for that purpose.

(4) An application may be made under subsection (3) even though the Court has refused to make an appointment on a previous application by the Official Assignee.

Remuneration of liquidator

191. (1) The liquidator of a company is entitled to receive remuneration for his services as liquidator and to be reimbursed expenses that he has properly incurred.

(2) The remuneration payable to the liquidator of a company shall be fixed applying the principles set out in section 464.

Notification of liquidation on public documents

192. (1) If a company is in liquidation the company's website, if any, and every document of a type specified in subsection (2) shall—

(a) contain a statement that the company is in liquidation; and

(b) specify the name of the liquidator.

(2) Subsection (1) applies to every public document issued by or on behalf of—

(a) the company;

(b) the liquidator of the company on which the name of the company appears.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) If subsection (1) is contravened each liquidator of the company who, without reasonable excuse, causes, permits or acquiesces in the contravention, commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

Vesting of assets in liquidator

193. (1) On the application of the liquidator of a company, the Court may order that all or any part of the assets of the company, or held by trustees on its behalf, shall vest in the liquidator from the date of the order.

(2) On the making of an order under subsection (1), the assets covered by the order vest in the liquidator by his official name.

(3) The liquidator of a company may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to the vested assets or which it is necessary to bring or defend for the purposes of liquidating the company and recovering its assets.

Liability of members and former members

Settlement of list of members

194. (1) Subject to subsection (7), the liquidator of a company shall, as soon as practicable after his appointment, settle a list of the members of the company containing the information and in the approved form.

(2) Forthwith after settling the list of members, the liquidator shall give notice to every person included in the list that he has done so in accordance with the Insolvency Rules.

(3) If a person objects to any entry in, or exclusion from, the list of members as settled by the liquidator which is not accepted by the liquidator, he may apply to the Court for an order removing the entry to which he objects or, as the case may be, modifying the entry.

(4) An application under subsection (3) shall be made within twenty-one days of the service on the applicant of the liquidator's notice declining to accept the objection.

(5) The liquidator of a company is not personally liable for the costs incurred by a person in an application under subsection (3) unless the Court makes an order to that effect.

(6) The liquidator may from time to time vary or add to the list of members as previously settled by him and any variation or addition is subject, as regards any person

affected, to the provisions of the Ordinance and the Insolvency Rules applicable to the settling of the list.

(7) The liquidator is not required to settle a list of members under this section if it appears to him that it will not be necessary to require any member to contribute to the assets of the company or to adjust the rights of members.

Rectification of register of members

195. (1) If it appears to the liquidator of a company that the register of members of the company should be rectified, he may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may rectify the register of members of the company.

Liability of members and former members

196. (1) Subject to sections 197 to 205, every member and former member of a company in liquidation is liable to contribute to the assets of a company in liquidation for the payment of its liabilities, for the expenses of the liquidation and for the adjustment of the rights of the members between themselves.

(2) The liability of a member or former member under this section creates a contract debt accruing due from the member or former member at the time when the liability commenced, but payable at the times when calls are made for enforcing the liability.

Liability of members limited

197. (1) Unless the articles of a company provide that the liability of a member is unlimited, the liability of a member under section 196 is limited to—

(a) any amount unpaid on a share held by the member, including any liability for calls; and

(b) any liability expressly provided for in the constitution, including such contribution as the member of a company limited by guarantee, or by shares and guarantee, may have undertaken to make in the event of the company being wound up.

(2) Subsection (1) does not affect—

(a) any liability of the member to pay or repay monies to the company imposed by a provision of this Ordinance or the Companies Ordinance; or

(b) any liability of a member to the company under a contract, including a contract for the issue of shares, or for any tort, breach of fiduciary duty or other actionable wrong committed by the member.

Liability of former members limited

198. (1) Subject to subsection (2), unless the Court is satisfied that the members of a company are able to discharge the liabilities set out in section 196, a former member of a company in liquidation is liable to contribute to the assets of the company for the purposes specified in that section to the same extent as a member.

(2) A former member—

(a) has no liability under section 196 if he ceased to be a member more than one year prior to the commencement of the liquidation; and

(b) is not liable to contribute to the assets of the company in respect of any liability of the company contracted after he ceased to be a member.

Liability if limited company becomes unlimited company

199. (1) This section applies if an unlimited company in liquidation was at some former time registered as a limited company.

(2) A person who ceased to be a member of a company before the company became registered as an unlimited company, and has not since become a member of the company, is liable to contribute to the assets of the company only to the extent that he would have been liable had the company remained registered as a limited company.

Liability if unlimited company becomes limited company

200. (1) This section applies if a limited company in liquidation was at some former time registered as an unlimited company.

(2) Notwithstanding sections 197 and 198, if a company referred to in subsection (1) enters into liquidation within the period of one year from the date on which it was registered as a limited company, a person who was a member of the company at the date of its registration as a limited company is liable, without limit, to contribute to the assets of the company in respect of liabilities contracted before that time.

Deceased or insolvent members and former members

201. (1) The personal representatives of a member or former member liable to contribute under section 196, who has died, are liable to contribute out of his estate to the assets of the company under section 196 to the same extent as the member.

(2) The liquidator of a company is entitled to submit a claim in the bankruptcy or liquidation of any member or former member of the company in respect of any contribution that the member or former member is required to make under section 196.

(3) The personal representatives and the bankruptcy trustee of a member or former member of a company in liquidation are entitled to make any application to Court, or take any such other action, as could be made or taken by the member or former member.

Insurance and other contracts not affected

202. Nothing in this Ordinance invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract.

Power of liquidator to enforce liability of member or former member

203. (1) The liquidator of a company may—

(a) if a member is liable to calls, make calls on that member; and

(b) if a member or former member is liable to the company, as a member under section 196, require him, by notice in writing, to discharge that liability.

(2) A call made under subsection (1)*(a)* shall be in writing and shall specify the amount of, or balance due in respect of, the call.

(3) The liability of a member under subsection (1) includes a liability of the estate of the person he represents.

(4) In the case of an unlimited company, a member may set-off against a liability under subsection (1)*(b)* any money due to him, or to the estate which he represents, from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit.

(5) The liquidator may enforce the liability of a member under subsection (1) only if that member is on the list of members settled by him under section 194.

Summary remedy against members and former members

204. (1) The liquidator may apply to the Court for an order under this section if—

(a) a member of a company fails to comply with a call made under section 203(1)*(a)*; or

(b) a member or former member fails to satisfy a liability when required to do so under section 203(1)*(b)*.

(2) On an application under subsection (1), the Court may order a member or former member to pay to the company any money due from him, or due from the estate of the person who he represents.

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

Order under section 204 to be conclusive evidence

205. An order made against a member under section 204 is, subject to any right of appeal, conclusive evidence that the money, if any, ordered to be paid is due.

Distributions

Distribution of assets of company

206. (1) Unless and to the extent that this Ordinance or any other law provides otherwise, the assets of a company in liquidation shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying admitted preferential claims in accordance with the provisions for the payment of preferential claims;

(c) after payment of the preferential claims, in paying all other admitted claims; and

(d) after paying all admitted claims, in paying any interest payable under section 215.

(2) Subject to section 153, the claims referred to in subsection (1)*(c)* rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be distributed to the members in accordance with their rights and interests in the company.

(4) For the purposes of this Ordinance, assets held by a company in liquidation on trust for another person are not assets of the company.

Sums due to members

207. (1) A claim by a person who is or was a member of a company, in the character of member, whether by way of dividend, profits, redemption proceeds or otherwise, ranks in priority after the claims of other creditors, including creditors with postponed claims, who are not members together with interest at the judgment rate on the claims of such creditors.

(2) Claims specified in subsection (1) shall be taken into account for the purpose of the final adjustment of the rights of members amongst themselves.

Claims having priority over floating charges

208. So far as the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay—

(a) the costs and expenses of the liquidation in accordance with the prescribed priority; and

(b) the preferential creditors,

those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

Claims by unsecured creditors

209. (1) An unsecured creditor may make a claim against a company in liquidation by submitting to the liquidator a written claim, signed by him or on his behalf.

(2) The liquidator may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (7), as soon as reasonably practicable after receiving a claim under subsection (1) from an unsecured creditor who has complied with any requirements that the liquidator may have imposed under subsection (2), the liquidator shall either admit or reject the claim in whole or in part.

(4) If the liquidator rejects the claim, whether in whole or in part, he shall as soon as practicable provide the unsecured creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, an unsecured creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the liquidator under subsection (2).

(6) The liquidator shall not admit a claim against the company unless it has been made in accordance with this section.

(7) The liquidator is not required to admit or reject claims under subsection (3) at any time when it appears to him that the company has insufficient assets to enable a distribution to be made to unsecured creditors.

(8) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim,

commits an offence.

(9) A person who commits an offence under subsection (8) is liable—

(a) on summary conviction, to imprisonment for a term of six months or a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $75,000 or to both.

Variation, withdrawal and expunging of claims

210. (1) A claim made under section 209 may—

(a) be amended or withdrawn by the creditor at any time before the liquidator has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the liquidator at any time after the liquidator has admitted it.

(2) The Court, on the application of the liquidator or, if the liquidator declines to make an application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

Claims by secured creditors

211. (1) A secured creditor may—

(a) value the assets subject to the security interest and claim in the liquidation of a company as an unsecured creditor for the balance of his debt; or

(b) surrender his security interest to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole of his debt,

but he is not obliged to do either.

(2) A secured creditor may, at any time, apply to the liquidator to amend the value that he placed on the security interest in his claim.

(3) On receiving an application under subsection (2), the liquidator may permit the secured creditor to amend the value that he places on the security interest if satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed.

(4) If the liquidator of a company is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)*(a)* or on an amendment under subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the liquidator or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the liquidator are entitled to bid for and purchase them.

Redemption of security interest by liquidator

212. (1) If a secured creditor has claimed in the liquidation of a company under section 211(1)*(a)*, the liquidator may at any time give notice to the creditor that he proposes at the expiration of twenty-eight days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within twenty-one days of the date of the notice, apply to the liquidator to revise the value that he places on the security interest in accordance with section 211(2).

(3) At the expiration of twenty-eight days from the date of the notice under subsection (1), the liquidator may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the liquidator to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the liquidator to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) If, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the liquidator or on appeal to the Court, the liquidator may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the liquidator, require him to elect whether or not to exercise his power to redeem under this section.

(6) If a notice to elect is served on a liquidator under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

Realisation of security interest by secured creditor

213. (1) If a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the liquidator for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) If a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the liability secured—

(a) if the creditor has previously valued his security interest and claimed in the liquidation for the balance under section 211(1)*(a)*, the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the liquidation as an unsecured creditor for the balance of the secured liability.

(3) For the purposes of this section, the secured liability includes contractual interest payable to the secured creditor on the liability up to the time of its satisfaction.

Surrender for non-disclosure

214. (1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in the liquidation of a company, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct—

(a) that he is not required to surrender his security interest; and

(b) that he values his security interest and amends his claim accordingly.

Interest after commencement of liquidation

215. (1) Interest is payable on any claim in the liquidation of a company in respect of the period after the commencement of the liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the liquidation of a company shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the liquidation.

(3) Subject to section 153, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally, and if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(4) The rate of interest payable under this section is the greater of—

(a) the judgment rate; and

(b) the rate that would be applicable to the claim if a liquidator of the company had not been appointed.

Power to exclude creditors not claiming in time

216. (1) A liquidator who has sufficient funds to make a distribution shall, subject to the retention of such sums as may be necessary for the other costs and expenses of the liquidation, including the liquidator's remuneration, by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims.

(2) A notice issued under subsection (1) shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

(3) If the liquidator sends a notice to creditors under subsection (1), a creditor who does not submit a claim to the liquidator on or before the date specified in the notice—

(a) is excluded from the benefit of any distribution on or after that date that is made before he submits his claim; and

(b) is not entitled to disturb the distribution of the dividend, by reason of not participating in it.

(4) If the liquidator makes more than one distribution, subsections (1) to (3) apply to each distribution.

Disclaimer

Liquidator may disclaim onerous property

217. (1) Subject to section 219, the liquidator of a company may, by the giving of the prescribed period of notice, disclaim any onerous property of the company even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(2) A liquidator who disclaims onerous property shall, within fourteen days of the date of the disclaimer notice, give notice to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(3) A liquidator who contravenes subsection (2) commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment, to imprisonment for a term of six months or to a fine of $20,000 or to both.

When disclaimer takes effect

218. (1) Subject to subsection (2), a disclaimer takes effect on the date of the disclaimer.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the liquidator is aware of their

addresses, to every person claiming under the company as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 221 with respect to that property before the end of a period of fourteen days beginning with the day on which the last notice under this subsection was given; or

(b) if such an application is made, the Court directs that the disclaimer shall take effect.

(3) If the Court gives a direction under subsection (2)*(b)*, it may also, instead of or in addition to any order it makes under section 221, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

Notice to liquidator to elect whether to disclaim

219. (1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the liquidator, require the liquidator to elect whether or not to disclaim the property.

(2) If a notice to elect is served on a liquidator, he is not entitled to disclaim the property under section 217 unless he does so within twenty-eight days of the date of service of the notice on him or within such extended period as the Court may allow.

Effect of disclaimer

220. (1) A disclaimer of onerous property under section 217—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) except so far as is necessary to release the company from liability, does not affect the rights or liabilities of any other person.

(2) A person sustaining loss or damage as a result of a disclaimer of onerous property under section 217 may claim in the liquidation of the company as a creditor for the amount of the loss or damage.

Vesting orders and orders for delivery

221. (1) Subject to section 222, if a liquidator disclaims onerous property under section 217, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer.

(2) On an application under subsection (1), the Court may, on such terms as it considers appropriate, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer; or

(c) a trustee for a person referred to in paragraph *(a)* or *(b)*.

(3) The Court shall not make an order in respect of a person specified in subsection (2)*(b)*, or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage sustained by a person for the purposes of section 220(2).

(5) Subject to subsection (6), if a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) If another law—

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) enables the order to be registered,

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the law have been complied with.

Vesting orders in respect of leases

222. (1) If the Court makes an order under section 221 vesting property of a leasehold nature in a person claiming under the company in liquidation as an underlessee or a mortgagee, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him at the commencement of the liquidation.

(2) If the property vested by an order under section 221 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) If no underlessee or mortgagee is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in 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; and

(b) if a vesting order is made under paragraph *(a)*, may vest the property free from all estates, encumbrances and interests created by the company.

(4) If an underlessee or a mortgagee declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

Disclaimer presumed valid

223. Unless it is proved that a liquidator has breached his duty to give notice under section 217(2) or that he has otherwise breached his duties under this Ordinance or the Insolvency Rules with regard to disclaimer, a disclaimer of property by the liquidator is presumed to be valid and effective.

Investigation of assets and affairs of company

Statement of affairs

224. (1) The liquidator or provisional liquidator of a company may require one or more relevant persons to prepare a statement of affairs of the company.

(2) Subject to section 249, the liquidator or provisional liquidator shall file with the Court each statement of affairs and each affidavit of concurrence that he receives.

(3) Subsection (2) does not apply to a liquidator appointed by the members of a company.

Preliminary report

225. (1) The liquidator of a company shall, within sixty days of the commencement of the liquidation, prepare a preliminary report covering, to the best of his knowledge and belief, the following matters—

(a) in the case of a company with share capital, the amount of capital issued, subscribed and paid up;

(b) the assets and liabilities of the company;

(c) if the company has failed, the causes of the failure; and

(d) whether, in his opinion, further enquiries are desirable with respect to—

(i) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(ii) possible claims under Part IX.

(2) The liquidator shall send a copy of the report prepared under subsection (1)—

(a) to each creditor of the company; and

(b) if in his report he states that further enquiries are desirable with respect to a matter referred to in subsection (1)*(d)*, to the Official Assignee.

(3) Subsection (2)*(b)* does not apply to the Official Assignee when he is acting as the liquidator of a company.

(4) The Court may, on the application of the liquidator, extend the period specified in subsection (1) on such terms and conditions as it considers appropriate.

Duty of Official Assignee concerning report under section 225

226. If the Official Assignee receives a report under section 225, he shall carry out such investigation, if any, as he considers appropriate.

Miscellaneous provisions

Liquidator to call meetings of creditors

227. (1) The liquidator shall call a meeting of the creditors of a company in liquidation if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) he is directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Insolvency Rules by 10% in value of the creditors of the company.

Rescission of contracts by the Court

228. (1) On the application of a person who is, as against the liquidator of a company, entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court considers just.

(2) Any damages payable to a person under an order made under subsection (1) may be claimed by him as a debt in the liquidation of the company.

Inspection of books by creditors

229. (1) At any time after the appointment of a liquidator of a company, the Court may, on such terms as it considers appropriate, make an order for the inspection of specified books, records and documents of the company that are in its possession.

(2) Application for an order under subsection (1) may be made by a creditor or member of the company.

Enforcement of liquidator's duties

230. (1) In this section "specified person" means—

(a) the Official Assignee;

(b) a creditor of a company in liquidation; or

(c) a member of a company in liquidation.

(2) If a liquidator fails to file any notice, return, account or other document, a specified person may serve a notice on the liquidator requiring him to remedy the default.

(3) If a liquidator fails to remedy the default specified in a notice served under subsection (1) within fourteen days of service of the notice on him, any specified person may apply to the Court for an order that the liquidator remedy the default within such time as the Court may specify.

(4) The Court may order that the costs of and incidental to an application under this section are payable by the liquidator personally.

(5) A liquidator who fails to comply with an order made under subsection (3) commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

(6) This section does not limit any other provision of this Ordinance or any other law.

Termination of liquidation

Termination of liquidation

231. The liquidation of a company terminates on the first occurring of—

(a) the making by the Court of an order terminating the liquidation under section 232, or such later date as may be specified in the order;

(b) the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 233(1), as modified by the Court under section 233(3), if appropriate; or

(c) the making by the Court of an order under section 233(3) exempting the liquidator from compliance with 233(1), or such later date as may be specified in the order.

Order terminating liquidation

232. (1) The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company or the Official Assignee.

(3) Before making an order under subsection (1), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers appropriate in connection with the termination of the liquidation.

(5) If the Court makes an order under subsection (1), the company ceases to be in liquidation and the liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) If the Court makes an order under subsection (1), the person who applied for the order shall, within ten days of the date of the order, file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6) commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment to a fine of $25,000.

Completion of liquidation

233. (1) As soon as practicable after completing his duties in relation to the liquidation of a company, the liquidator shall—

(a) prepare and send to every creditor of the company with an admitted claim and to every member of the company—

(i) his final report, complying with subsection (2), and a statement of realisations and distributions in respect of the liquidation; and

(ii) a summary of the grounds upon which a creditor or member may object to the dissolution of the company; and

(b) file with the Registrar a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company.

(2) The final report of a liquidator shall contain a statement—

(a) that all known assets of the company have been disclaimed, realised or distributed without realisation;

(b) that all proceeds of realisation have been distributed; and

(c) that there is no reason why, in his opinion, the company should not be struck from the Register, and dissolved.

(3) On the application of the liquidator, the Court may on such terms and conditions as it considers just—

(a) exempt the liquidator from compliance with subsection (1)*(a)*; or

(b) modify the application of the provisions of subsection (1) to the liquidator.

Release of liquidator

234. (1) A person, other than the Official Assignee, who has ceased to be a liquidator of a company, has his release as follows—

(a) if the person has resigned as liquidator, as provided for in the Insolvency Rules;

(b) on the termination of the liquidation, by the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 233(1), as may be modified by the Court under section 233(3), unless the Court otherwise orders, at the time at which the person vacated office; or

(c) in any other case, as provided for in subsections (2) to (10).

(2) If a person has been removed by the Court as liquidator under section 188 or the Court has terminated the liquidation by order made under section 232, the Court may, when making the order—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(3) A person, other than the Official Assignee, who has ceased to be a liquidator of a company and who has not obtained his release in accordance with subsection (1) or (2) or a person who has ceased to be the provisional liquidator of a company, may apply to the Court for his release and the Court may—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(4) If the Court withholds a person's release under subsection (2) or (3), it may make a compensation order against the former liquidator under section 266.

(5) Subject to subsection (7), if a former liquidator is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the company.

(6) An order for the release of a former liquidator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(7) The release of a liquidator or provisional liquidator under this section does not prevent the Court from making an order under section 266 against the liquidator or provisional liquidator.

(8) If the Official Assignee ceases to be liquidator and another liquidator is appointed in his place, the Official Assignee obtains his release—

(a) from the appointment of the new liquidator; or

(b) such later date as the Court may determine.

(9) In any other case, the Official Assignee obtains his release as provided by the Insolvency Rules.

(10) A liquidator who obtains his release under this section shall file a notice in the approved form with the Registrar.

Dissolution

235. The Insolvency Rules shall provide for the dissolution of a company on the termination and completion of the liquidation of the company.

Unregistered companies

Liquidation of unregistered companies

236. (1) An unregistered company may only be put into liquidation under this Part by the appointment of a liquidator by the Court.

(2) The members of an unregistered company may not appoint a liquidator under section 159 and any resolution of the members of an unregistered company that purports to appoint a liquidator under section 159 is void and of no effect.

(3) Subject to the modifications and exceptions set out in sections 236 to 239 or the Insolvency Rules, the provisions of this Part apply to an application to appoint a liquidator of an unregistered company and to the liquidation of an unregistered company.

(3) Subject to the modifications and exceptions in sections 236 to 239, this Part and other provisions of this Ordinance relevant to the liquidation of a company apply to the liquidation of an unregistered company and a reference in this Part or any other relevant provisions of this Ordinance—

(a) to a company are to be taken as including a reference to an unregistered company; and

(b) to assets are to be taken as a reference to assets situated in the Islands.

Grounds for appointment of liquidator of unregistered company

237. (1) The Court may appoint the Official Assignee or an eligible insolvency practitioner as the liquidator of an unregistered company if—

(a) it is insolvent;

(b) it is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

(c) it has ceased to carry on business;

(d) it is carrying on business only for the purpose of winding up its affairs;

(e) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(f) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(f)*—

(a) the "public" includes the public within and outside the Islands; and

(b) the preservation of the reputation of the Islands is a matter of public interest.

(3) The Court shall not appoint a liquidator of an unregistered company unless it is satisfied that it has a connection with the Islands.

(4) For the purposes of subsection (3), an unregistered company has a connection with the Islands only if—

(a) it has or appears to have, or to have had, assets in the Islands;

(b) it is carrying on, or has carried on or purported to carry on, business in the Islands; or

(c) there is a reasonable prospect that the appointment of a liquidator of the unregistered company under this Part will benefit the creditors of the company.

(5) An application for the appointment of a liquidator of an unregistered company may be made—

(a) even though it has been dissolved or has otherwise ceased to exist under or by virtue of the laws of any other country; and

(b) whether or not it is or has been registered as a foreign company under Part 4, Division 3 of the Companies Ordinance, Cap. 16.08 or Part XVI of the Companies Ordinance 2017.

Applicant for liquidation of an unregistered company

238. Any one or more of the following may apply to the Court for the appointment of a liquidator of an unregistered company—

(a) the unregistered company;

(b) a creditor of the unregistered company;

(c) the Attorney General under section 164; or

(d) the Commission under section 164.

Presumed insolvency of unregistered company

239. (1) An unregistered company is presumed to be insolvent if it fails to comply with the requirements of a notice issued in accordance with this section.

(2) If a person has instituted an action or other proceeding against any member of an unregistered company for any debt or demand due, or claimed to be due, from the company or from him in his character as member of the unregistered company, that person may issue a notice to the company in accordance with subsection (3).

(3) A notice referred to in subsection (2) shall—

(a) be in writing and shall specify the action or proceeding that has been instituted;

(b) be signed by the person who instituted the action or proceeding or by a person authorised to issue the notice on his behalf;

(c) require the unregistered company to pay, secure or compound for the debt or demand, or to procure the action or proceeding to be stayed or to indemnify the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it; and

(d) state that if the notice is not complied with, application may be made to the Court for the appointment of a liquidator.

(4) This section applies to an unregistered company in place of section 155, but sections 156 and 157 apply to a demand made under this section (with such modifications as are required) as if the demand was a statutory demand.

The Insolvency Rules may modify or disapply provisions of this Ordinance

240. The Insolvency Rules may modify or disapply the provisions of this Ordinance in relation to the liquidation of an unregistered company.

PART VIII

PROVISIONS RELATING TO INSOLVENT COMPANIES

General

Interpretation

241. (1) In this Part—

"office holder", in respect of a company, means—

(a) in sections 242 to 249, the company's administrator, liquidator, provisional liquidator or administrative receiver;

(b) in the definition of "relevant person" and in sections 250 to 256, the company's administrator, liquidator or provisional liquidator; and

(c) in section 257, the company's administrator, liquidator, provisional liquidator or administrative receiver or, if a company arrangement has taken effect, the supervisor of the arrangement;

"relevant period" means the period of two years prior to—

(a) in the case of a company in administration, the date of the administration order;

(b) in the case of a company in liquidation, the date of the appointment of the liquidator;

(c) if a provisional liquidator has been appointed, the date of his appointment; and

(d) if an administrative receiver has been appointed, the date of his appointment; and

"relevant person" means—

(a) a person who is or who, within the relevant period has been, an officer of the company;

(b) a person who is or who, within the relevant period, has been in the employment of the company and who, in the opinion of the office holder or the Official Assignee is capable of providing the information required;

(c) a person who is or who, within the relevant period, has been an officer of or in the employment of a company which is an officer of the company; or

(d) a person who, within the relevant period, has promoted the formation of the company.

(2) For the purposes of the definition of "relevant person", "employment" includes employment under a contract for services.

Application to Court concerning office holder

242. A person aggrieved by an act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder.

Company's books

243. If a company is in administration or liquidation, all documents of the company and of the administrator or liquidator are, as between the members of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in them.

Order to deliver assets and documents

244. (1) If any person has in his possession or control any assets or documents to which the company appears to be entitled, the Court may, on the application of the office holder, require that person forthwith, or within such period as the Court may direct, to pay, deliver, convey, surrender or transfer the assets or documents to the office holder.

(2) Subsection (3) has effect if the office holder—

(a) seizes or disposes of any asset which is not an asset of the company; and

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

(3) In the circumstances specified in subsection (2), the office holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office holder's own negligence; and

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

Statement of affairs

Notice to be given by office holder

245. (1) If, pursuant to this Ordinance, an office holder requires a relevant person to prepare a statement of affairs and submit it to him, he shall send a notice to that person in the approved form.

(2) A notice sent under subsection (1) shall specify a date by which the statement of affairs is to be delivered to him, which shall be no earlier than eighteen days after the date upon which the notice is sent to the person.

Statement of Affairs

246. (1) A statement of affairs shall be in the approved form and contain the prescribed particulars and information.

(2) Without limiting subsection (1), the following particulars shall be set out in a statement of affairs—

(a) the assets and liabilities of the company;

(b) the names and addresses of the creditors of the company; and

(c) the security interests held by creditors of the company and the dates upon which the security interests were created.

(3) Subject to section 249, a relevant person required by an office holder to prepare and submit a statement of affairs shall verify the statement of affairs by affidavit and submit the statement of affairs to the office holder, together with the verifying affidavit, on or before the date specified in the notice sent to him under section 245(1).

(4) A relevant person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $50,000 or to both.

Affidavit of concurrence

247. (1) A relevant person required by an office holder to prepare and submit a statement of affairs may, instead, submit an affidavit of concurrence complying with the Insolvency Rules.

(2) A relevant person who submits an affidavit of concurrence to an office holder on or before the date specified in the notice sent to him does not commit an offence under section 246(4).

Release from duty to submit statement of affairs

248. (1) An office holder or the Court may, in accordance with the Insolvency Rules—

(a) release a person from an obligation imposed on him to prepare and submit a statement of affairs; or

(b) extend the period of time for the submission of the statement of affairs.

(2) An order of the Court under this section may be made subject to such terms and conditions as the Court considers appropriate.

Application for order of limited disclosure

249. (1) If an office holder considers that it would prejudice the conduct of the insolvency proceeding for the whole or part of a statement of affairs submitted to him to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement of affairs, or any specified part of it.

(2) The Court may, on an application under subsection (1), order that the statement of affairs or, as the case may be, the specified part of it—

(a) in the case of an administrative receivership, is not to be open to inspection otherwise than with leave of the Court; or

(b) in any other case, is not filed in Court, or is filed separately is not to be open to inspection otherwise than with leave of the Court.

(3) An order of the Court under subsection (2) may include directions as to the delivery of documents to the Registrar and the disclosure of relevant information to other persons.

Investigation of insolvent company's affairs

Power to obtain information

250. (1) An office holder or the Official Assignee may, by notice in writing, require a person specified in subsection (2)—

(a) to provide him with such information concerning the company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs as he reasonably requires;

(b) to attend on him at such reasonable time and at such place as may be specified in the notice; or

(c) to be examined on oath or affirmation by him, or by his attorney, on any matter referred to in paragraph *(a)*.

(2) A notice under subsection (1) may be sent to—

(a) an officer or former officer of the company;

(b) a member or former member of the company;

(c) a person who was involved in the promotion or formation of the company;

(d) a person who is, or within the relevant period has been, employed by the company, including a person employed under a contract for services;

(e) a person who is or at any time has been a receiver, accountant or auditor of the company;

(f) a person who is or who, at any time has been, an officer of or in the employment of a company which is an officer of the company; or

(g) if the notice is sent by the Official Assignee or a liquidator or provisional liquidator, any person who has acted as administrator, liquidator or provisional liquidator of the company.

(3) A person who receives a notice under subsection (1) and who, without reasonable excuse, fails to comply with the notice, commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Examination by office holder or Official Assignee

251. (1) This section applies to the examination of a person under section 250(1)*(c)* by an office holder or the Official Assignee.

(2) The office holder or Official Assignee, or the attorney conducting the examination on his behalf, may administer an oath to, or take the affirmation of, a person to be examined.

(3) A person required to be examined is entitled to be represented by an attorney.

(4) The office holder or the Official Assignee shall ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

Application for examination before Court

252. (1) If a company is in liquidation, an application may be made to the Court, *ex parte*, by the liquidator or by the Official Assignee, for an order that a person specified in subsection (3) appear before the Court for examination concerning the company, or a connected entity.

(2) Without limiting subsection (1), an examination before the Court may cover the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or a connected entity.

(3) An application under subsection (1) may be made in respect of—

(a) a person specified in section 250(2);

(b) any other person who the applicant considers is capable of giving information concerning the company or a connected entity; or

(c) any other person who the applicant knows or suspects has in his possession or control any asset of the company or is indebted to the company.

(4) An application under subsection (1) shall state whether the applicant seeks a public or a private examination.

Order for examination

253. (1) In this section, "examinee" means the person to be examined before the Court.

(2) On hearing an application made under section 252, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (1)—

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the company, or a connected entity, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected entity;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

(f) if the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) If the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, if the liquidator is not the Official Assignee—

(a) if the applicant is the liquidator of the company, send a sealed copy of the order to the Official Assignee; or

(b) if the applicant is the Official Assignee, send a sealed copy of the order to the liquidator of the company.

(5) If an order under subsection (2) is for the public examination of an examinee, the applicant shall give not less than fourteen days' notice of the examination to each creditor and member of the company.

(6) The Court may, as part of an order made under this section, or at any subsequent time, make one or more of the following directions—

(a) a direction specifying the matters upon which the examinee may be examined; and

(b) a direction specifying the procedures to be followed at the examination.

Conduct of examination

254. (1) This section applies to an examination held pursuant to an order made under section 252.

(2) An examinee shall be examined on oath and he shall answer such questions as the Court may put or allow to be put to him.

(3) Subject to subsection (2), an examination is conducted by the applicant, or by his attorney, and the person examined is entitled to be represented by an attorney who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

(4) The examinee may also be examined—

(a) if the applicant is the Official Assignee, by the liquidator; or

(b) if the applicant is the liquidator of the company, by the Official Assignee.

(5) At a public examination questions may, with the leave of the Court, be put to the examinee by any creditor or member of the company present at the examination or by the attorney representing such creditor or member.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 255, the written record of an examination is admissible in evidence in any proceedings under this Ordinance other than proceedings for a disqualification order.

Incriminating answers and admissibility of record

255. (1) An examinee is not excused from answering a question put to him at an examination held under section 250 or at an examination held pursuant to an order made under section 252 on the ground that the answer may incriminate him or tend to incriminate him.

(2) The record of an examination held under section 250 or pursuant to an order made under section 252 is not admissible as evidence in any criminal proceedings against the examinee except if he is charged with the offence of perjury.

Offence

256. (1) A person who, without reasonable excuse, fails to attend an examination ordered to be held under section 252, commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

(2) If a person without reasonable excuse fails at any time to attend an examination ordered to be held under section 252, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may 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.

(3) In such a case the Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Insolvency Rules, until such time as the court may order.

Supplies of utilities

Limitations on restrictions imposed by suppliers of utilities

257. (1) This section applies in the case of a company if—

(a) the company is in administration;

(b) an administrative receiver is appointed in relation to the company;

(c) a company arrangement approved under Part III has taken effect in relation to the company;

(d) the company is in liquidation;

(e) a provisional liquidator of the company is appointed.

(2) If a request is made by or with the concurrence of the office holder for the giving, after the effective date, of a supplier specified in the Insolvency Rules as a prescribed supplier, the supplier—

(a) may make it a condition of the giving of the supply that the office holder personally guarantee the payment of any charges in respect of the supply; but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply,

that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) For the purposes of this section, the "effective date" is one of the following applicable dates—

(a) the date on which the administrator was appointed;

(b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed);

(c) the date on which the company arrangement took effect;

(d) the date on which the liquidator was appointed;

(e) the date on which the provisional liquidator was appointed.

PART IX

VOIDABLE TRANSACTIONS AND MALPRACTICE

Interpretation for this Part

258. (1) In this Part—

"insolvent liquidation" means a liquidation of a company if the assets of the company are insufficient to pay its liabilities and the expenses of the liquidation;

"insolvency transaction" has the meaning specified in subsection (2);

"officer holder" means—

(a) in the case of a company in administration, its administrator; and

(b) in the case of a company in liquidation, its liquidator;

"onset of insolvency" means—

(a) the date on which the application for the administration order was filed, if a company is in administration or is in liquidation and the liquidator was appointed by the Court immediately following the discharge of an administration order;

(b) the date on which the application for the appointment of the liquidator was filed, if a company is in liquidation and the liquidator was appointed by the Court in circumstances other than those set out in paragraph *(a)*; or

(c) the date of the appointment of the liquidator, if a company is in liquidation and the liquidator was appointed by the members;

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a floating charge that is voidable under section 261; and

(d) an extortionate credit transaction.

"vulnerability period", means—

(a) for the purposes of sections 259, 260 and 261—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing two years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(b) for the purposes of section 262, the period commencing five years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator.

(2) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the company is insolvent; or

(b) it causes the company to become insolvent.

(3) For the purposes of subsection (2)—

(a) a company—

(i) is presumed to have been insolvent if, at the time, either of the circumstances specified in section 5(1)*(a)* applied to it; and

(ii) was insolvent if, at the time, section 5(1)*(b)*(i) applied to it; and

(b) section 5(1)*(b)*(ii) has no application.

(4) This Part applies in respect of—

(a) a company that is in administration; and

(b) a company that is in liquidation.

(5) In this Part—

(a) a company goes into insolvent liquidation if a liquidator is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation; and

(b) a relevant company is a company that has gone into insolvent liquidation.

Voidable transactions

Unfair preferences

259. (1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the company going into insolvent liquidation, would be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference even though it is entered into pursuant to the order of a court or tribunal in or outside the Islands.

(4) If a transaction entered into by a company within the vulnerability period has the effect specified in subsection (1)*(c)* in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

Undervalue transactions

260. (1) Subject to subsection (2), a company enters into an undervalue transaction with a person if—

(a) the company—

(i) 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

(ii) 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; and

(b) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if—

(a) the company enters into the transaction in good faith and for the purposes of its business; and

(b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

(3) A transaction may be an undervalue transaction even though it is entered into pursuant to the order of a court or tribunal in or outside the Islands.

(4) If a company enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)*(a)* or subsection (1)*(b)*, unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

Voidable floating charges

261. (1) Subject to subsection (2), a floating charge created by a company is voidable if—

(a) it is created within the vulnerability period; and

(b) it is an insolvency transaction.

(2) A floating charge is not voidable to the extent that it secures—

(a) money advanced or paid to the company, or at its direction, at the same time as, or after, the creation of the charge;

(b) the amount of any liability of the company discharged or reduced at the same time as, or after, the creation of the charge;

(c) the value of assets sold or supplied, or services supplied, to the company at the same time as, or after, the creation of the charge; and

(d) the interest, if any, payable on the amount referred to in paragraphs *(a)* to *(c)* pursuant to any agreement under which the money was advanced or paid, the liability was discharged or reduced, the assets were sold or supplied or the services were supplied.

(3) For the purposes of this section, if a company creates a floating charge in favour of a connected person within the vulnerability period, unless the contrary is proved, it is presumed that the charge was an insolvency transaction.

(4) For the purposes of subsection (2)*(c)*, the value of assets or services sold or supplied is the amount in money which, at the time they were sold or supplied, could reasonably have been expected to be obtained for the sale or supply of the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which the assets or services were sold or supplied to the company.

Extortionate credit transactions

262. A transaction entered into by a company within the vulnerability period for, or involving the provision of, credit to the company is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction are such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

Orders in respect of voidable transactions

263. (1) Subject to section 264, if it is satisfied that a transaction entered into by a company is a voidable transaction the Court, on the application of the office holder—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers appropriate for restoring the position to what it would have been if the company had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the office holder of any sums paid by the company to that person by virtue of the transaction;

(iii) the surrender by any person to the office holder of any asset held by him as security for the purposes of the transaction;

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)*(b)*, an order under that subsection may—

(a) require any assets transferred as part of the transaction to be vested in the company;

(b) require any assets to be vested in the company if it represents in any person's hands the application either of the proceeds of sale of assets transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the company or the liability of the company under any contract;

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the office holder as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers 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 assets and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to submit a claim in the liquidation of the company in such amount as the Court considers appropriate; and

(h) require the company to make a payment or transfer assets to any person affected by an order made under subsection (1).

(3) Subject to section 264, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction.

Limitations on orders under section 263

264. (1) This section applies to an order made under section 263(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in assets that was acquired in good faith and for value from a person other than the company, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the office holder, except if that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the company.

(3) For the purposes of subsection (2), if a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph *(a)* or *(b)*, it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of—

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if—

(a) in the case of a company in administration, he had notice of the filing of the application on which the administration order was made;

(b) in the case of a company if a liquidator was appointed immediately following the discharge of an administration order, he had notice of the filing of the application on which the administration order was made or the filing of the application on which the order appointing a liquidator was made; or

(c) in the case of a company if a liquidator was appointed in circumstances other than those set out in paragraph *(b)*, he had notice of the filing of the application on which the order appointing a liquidator was made.

Remedies not exclusive

265. This Part applies without prejudice to the availability of any other remedy, even in relation to a transaction that the company had no power to enter into.

Summary remedy against delinquent officers and others

266. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (3) if it is satisfied that a person specified in subsection (2)—

(a) has misapplied or retained, or become accountable for any money or other assets of the company; or

(b) has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) An order under subsection (3) may be made against a person—

(a) who is or has been an officer of the company;

(b) who has acted as liquidator of the company;

(c) who has acted as administrator, administrative receiver, supervisor or interim supervisor of the company;

(d) who has acted as a receiver appointed by the Court; or

(e) who, not being a person falling within paragraphs *(a)* or *(b)*, is or has been concerned in the promotion, formation, management, liquidation or dissolution of the company.

(3) If subsection (1) applies, the Court may make one or more of the following orders against the person—

(a) that he repays, restores or accounts for the money or other assets, or any part of it;

(b) that he pays to the company as compensation for the misfeasance or breach of duty such sum as the Court considers just; and

(c) that he pays interest to the company at such rate as the Court considers just.

(4) The Court shall not make an order under subsection (3) unless it has given the person the opportunity—

(a) to give evidence, call witnesses and bring other evidence in relation to the application; and

(b) to be represented, at his own expense, by an attorney who may put to him, or to other witnesses, such questions as the Court may allow for the purpose of explaining or qualifying any answers or evidence given.

(5) Application may not be made for an order under this section against a liquidator or an administrator who has been released, except with the leave of the Court.

(6) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Fraudulent and insolvent trading

Fraudulent trading

267. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) if it is satisfied that, at any time before the commencement of the liquidation of the company, any of its business has been carried on—

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose.

(2) If subsection (1) applies, the Court may declare that any person who was knowingly a party to the carrying on of the business in such manner is liable to make such contribution, if any, to the company's assets as the Court considers proper.

Insolvent trading

268. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) against a person who is or has been a director of the company if it is satisfied that—

(a) at any time before the commencement of the liquidation of the company, the person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(b) he was a director of the company at that time.

(2) Subject to subsection (3), if subsection (1) applies, the Court may order that the person concerned makes such contribution, if any, to the company's assets as the Court considers proper.

(3) The Court shall not make an order against a person under subsection (2) if it is satisfied that after he first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step reasonably open to him to minimise the loss to the company's creditors.

(4) For the purposes of subsections (1) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps reasonably open to him which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he does not carry out but which has been entrusted to him.

(6) Nothing in this section affects section 267.

Ancillary orders

269. (1) If the Court makes an order under section 267 or 268, it may give such directions or make such further order as it considers proper for giving effect to the order.

(2) Without limiting subsection (1), the Court may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), "assignee"—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) If the court makes a declaration under either section 267 or 268 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest on the debt shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 267 and 268 have effect even though the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

Recoveries under sections 263, 267 and 268

270. Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 263, 267 or 268 are deemed to be assets of the company available to pay unsecured creditors of the company.

Restriction on re-use of company names

271. (1) This section applies to a person if—

(a) a relevant company goes into insolvent liquidation; and

(b) the person was a director of the company at any time in the period of twelve months prior to the commencement of the liquidation of the company.

(2) For the purposes of this section—

(a) a name is a prohibited name in relation to a person specified in subsection (1) if—

(i) it is a name by which the relevant company was known at any time in the period of twelve months referred to in subsection (1)*(b)*; or

(ii) it is a name which is so similar to a name falling within paragraph *(a)* as to suggest an association with the relevant company; and

(b) a company is "known", at any time, by its name at that time or by any name under which the company carries on business at that time.

(3) Except with leave of the Court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of five years beginning with the date on which the liquidation of the relevant company commenced—

(a) be a director of any other company that is known by a prohibited name;

(b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company specified in paragraph *(a)*;

(c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on, otherwise than by a company, under a prohibited name.

(4) A person who contravenes subsection (3) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

(5) On an application for leave under subsection (3), the Official Assignee may appear and call the attention of the Court to any matters which seem to him to be relevant.

Personal liability for debts, following contravention of section 271

272. (1) A person is personally responsible for all the relevant debts of a company if at any time—

(a) in contravention of section 271, he is involved in the management of the company;

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the Court) by a person whom he knows at that time to be in contravention in relation to the company of section 271.

(2) If a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section—

(a) the relevant debts of a company are—

(i) in relation to a person who is personally responsible under subsection (1)*(a)*, such debts and other liabilities of the company as are incurred

at a time when that person was involved in the management of the company; and

(ii) in relation to a person who is personally responsible under subsection (1)*(b)*, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as referred to in that paragraph;

(b) a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company; and

(c) a person who, as a person involved in the management of a company, has at any time acted on instructions given, without the leave of the Court, by a person whom he knew at that time to be in contravention in relation to the company of section 271, is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Offences

Fraudulent conduct

273. (1) If a liquidator of a company is appointed under section 159 or 170, a person who is or has been an officer of the company is deemed to have committed an offence if, at any time whilst an officer or during the period of twelve months preceding the commencement of the liquidation, he has—

(a) made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of any execution against the company's assets; or

(b) concealed or removed any of the company's assets since, or within, sixty days of, the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person does not commit an offence under this section—

(a) by reason of conduct constituting an offence under subsection (1)*(a)* which occurred more than five years before the commencement of the liquidation; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Malpractice in anticipation, and after commencement, of liquidation

274. (1) If a liquidator of a company is appointed under section 159 or 170, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has—

(a) concealed any of the company's assets to, or in excess of, the prescribed value or concealed any debt due to or from the company;

(b) fraudulently removed any of the company's assets to, or in excess of, the prescribed value;

(c) concealed, destroyed, mutilated, altered or falsified any book or paper affecting or relating to the company's assets or affairs, including any security;

(d) made any false entry in any register, book or document belonging to the company or affecting or relating to its assets or affairs;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's assets or affairs; or

(f) pledged or disposed of any assets of the company which has been obtained on credit and has not been paid for (unless the pledging or disposal was in the ordinary way of the company's business).

(2) A person specified in subsection (1)—

(a) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has been privy to the doing by others of any of the things mentioned in subsection (1)*(c)*, *(d)* or *(e)*; and

(b) commits an offence if, at any time after the commencement of the liquidation, the person does any of the things mentioned in subsection *(a)* to *(f)*, or is privy to the doing by others of any of the things mentioned in paragraphs *(c)* to *(e)* of that subsection.

(3) A person who proves—

(a) that he had no intention to defraud has a defence to a charge under—

(i) subsection (1)*(a)* or *(f)*; or

(ii) subsection (2), in respect of the things mentioned in subsection (1)*(a)* or *(f)*;

(b) that he had no intent to conceal the state of affairs of the company or to defeat the law has a defence to a charge under—

(i) subsection (1)*(c)* or *(d)*; or

(ii) subsection (2), in respect of the things mentioned in subsection *(c)* or *(d)*.

(4) If a person pledges or disposes of any assets in circumstances which amount to an offence under subsection (1)*(f)*, every person who takes in pledge, or otherwise

receives, the assets knowing them to be pledged or disposed of in such circumstances, commits an offence.

(5) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Misconduct in course of liquidation

275. (1) If a company is in liquidation, any person, being a past or present officer of the company, commits an offence if the person—

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the company's assets, and how and to whom and for what consideration and when the company disposed of any of its assets (except such assets as have been disposed of in the ordinary way of the company's business);

(b) does not deliver up to the liquidator, or as the liquidator directs, all assets of the company in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator as soon as practicable; or

(e) after the commencement of the liquidation, prevents the production of any book or paper affecting or relating to the company's assets or affairs.

(2) A person specified in subsection (1)—

(a) commits an offence if, after the commencement of the liquidation, he attempts to account for any part of the company's assets by fictitious losses or expenses; and

(b) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, he has attempted to account for any part of the company's assets by fictitious losses or expenses at any meeting of the company's creditors.

(3) A person does not commit an offence under—

(a) subsection (1)*(a)*, *(b)* or *(c)*, if the person proves that he had no intent to defraud; or

(b) subsection (1)*(e)*, if the person proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Falsification of company's books by member

276. (1) If a company is in liquidation, a member of the company commits an offence if he—

(a) destroys, mutilates, alters or falsifies any books, papers or securities; or

(b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Material omissions from statement relating to company's affairs

277. (1) If a company is in liquidation, any person, being a past or present officer of the company—

(a) commits an offence if he makes any material omission in any statement relating to the company's affairs; and

(b) is deemed to be guilty of that offence if, prior to the liquidation, he has made any material omission in any such statement.

(2) A person does not commit an offence under this section if the person proves that he had no intent to defraud.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

False representations to creditors

278. (1) If a company is in liquidation, any person, being a past or present officer of the company—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the liquidation; and

(b) is deemed to have committed that offence if, prior to the liquidation, he has made any false representation, or committed any other fraud, for that purpose.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

PART X

DISQUALIFICATION ORDERS AND UNDERTAKINGS

Interpretation for this Part

279. For the purposes of this Part, a company becomes insolvent if—

(a) an administration order is made in respect of the company, on the date that the administration order is made;

(b) an administrative receiver of the company is appointed, on the date of the appointment of the administrative receiver;

(c) a liquidator of the company is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation, on the date of the liquidator's appointment; or

(d) a liquidator is appointed by the Court on the ground specified in section 161(1)*(c)*, that is in the public interest for a liquidator to be appointed, on the date of the liquidator's appointment.

Disqualification orders and undertakings

280. (1) A disqualification order is an order that a person shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A disqualification undertaking is an undertaking in writing given by a person to the Official Assignee that he will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, a person engages in a prohibited activity if—

(a) he is a director of a company;

(b) he acts as the voluntary liquidator of a company;

(c) he acts as the receiver of the assets of a company;

(d) he acts as an insolvency practitioner;

(e) in any way, whether directly or indirectly, he is concerned with or takes part in the promotion, formation or management of a company; or

(f) he undertakes any activity prescribed as a prohibited activity.

(4) A person is a "disqualified person" for the period in which—

(a) a disqualification order has effect against him; or

(b) a disqualification undertaking is in place in respect of him.

(5) The period specified in a disqualification order, or disqualification undertaking, made against or in respect of a person, runs concurrently with the period specified in any other disqualification order or disqualification undertaking made against or in respect of that person.

Application for disqualification order

281. (1) Subject to subsection (2), the Official Assignee may apply to the Court for a disqualification order against a person by filing at Court an application and one or more affidavits in support, at least one of which shall be an affidavit sworn by the Official Assignee specifying the facts and matters that the Official Assignee relies upon to support the application.

(2) The application shall be endorsed with the following information—

(a) that if the application is successful, the Court may make a disqualification order against the person concerned for a maximum period of ten years;

(b) that a disqualified person is for the period of the disqualification order prohibited from engaging in any prohibited activity within the meaning of section 280(3); and

(c) that any evidence that the respondent wishes to be taken into consideration by the Court shall be filed with the Court and served on the Official Assignee within the time limits specified in section 282, which shall be set out on the application.

(3) On the filing of an application for a disqualification order, the Court shall fix, and endorse on the application, a date and time for the hearing of the application not less than eight weeks after the date that the application was filed.

(4) A sealed copy of the application together with the supporting affidavit or affidavits shall be served on the respondent not more than fourteen days after the date that the application is filed.

(5) In this section and in sections 282 and 283, "respondent" means the person against whom a disqualification order is applied for under subsection (1).

Affidavits in response and reply

282. (1) A respondent served with an application for a disqualification order shall, within twenty-eight days of the date of service, file affidavit evidence in opposition to the application if he or she—

(a) opposes the application for a disqualification order; or

(b) while not opposing the making of a disqualification order, intends to adduce mitigating factors with a view to justifying a short period of disqualification.

(2) In any affidavit filed under subsection (1), the respondent shall state the basis on which the application is contested or a short period of disqualification is sought.

(3) The respondent shall forthwith upon filing an affidavit serve a copy on the Official Assignee.

(4) The Official Assignee shall, within fourteen days of receiving a copy of the respondent's affidavit or affidavits, file any further affidavits in reply that he wishes the Court to take into consideration and shall forthwith serve a copy of the affidavit or affidavits on the respondent.

Hearing of application for disqualification order

283. (1) The Court shall, on the hearing of the application—

(a) determine the application summarily; or

(b) if it considers that questions of law or fact arise that are not suitable for summary determination, give directions for the further conduct of the matter and adjourn it to a fixed date.

(2) On an application under section 281, the Court may make a disqualification order against a person—

(a) who has been convicted on indictment—

(i) of an offence in connection with the promotion, formation, management or dissolution of a company that is or becomes insolvent; or

(ii) of an offence under this Ordinance that relates to a company that at any time becomes insolvent,

whether the person was convicted before or after the company became insolvent;

(b) who has had an order under section 267 or section 268 made against him; or

(c) who is or has been a director, voluntary liquidator or receiver of a company that is or becomes insolvent, whether while he was a director, voluntary liquidator or receiver or subsequently, and—

(i) has been guilty of fraud in relation to the company or of any misfeasance or breach of duty as a director, voluntary liquidator or receiver of the company; or

(ii) if the Court is of the opinion that the person's conduct as director, voluntary liquidator or receiver, either taken alone or taken together with his conduct as a director, voluntary liquidator or receiver of any other company or companies, makes him unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution.

(3) For the purposes of subsection (2)*(c)*, "receiver" means a receiver other than an administrative receiver.

(4) The reference in subsection (2)*(c)*(ii) to a person's conduct as a director, voluntary liquidator or receiver of a company includes that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(5) The Court may make a disqualification order against the respondent notwithstanding the respondent not filing evidence in opposition or appearing at the hearing, provided that the Court is satisfied that the respondent has been served with the application,

(6) The Court shall, on making a disqualification order, specify the period for which the order has effect which may commence on a date no earlier than the date of the order and no later than twenty-eight days after the date of the order and shall not exceed ten years.

(7) A person against whom an application for a disqualification order is made may appear and give evidence or call witnesses on the hearing of the application.

Matters for determining unfitness of directors

284. Without limiting section 283(2)*(c)*(ii), in determining whether a person's conduct as a director, voluntary liquidator or receiver of a company makes him unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution, the Court shall, as respects his conduct as a director, voluntary liquidator or receiver of that company, have regard in particular to—

(a) any misfeasance or breach of any fiduciary or other duty by him in relation to the company;

(b) any misapplication or retention by him of, or any conduct by the director giving rise to an obligation to account for, any money or other assets of the company;

(c) the extent of his responsibility for the company entering into any transaction liable to be set aside under Part IX;

(d) in the case of a director—

(i) if the company or the directors have persistently failed to comply with the Companies Ordinance, the extent of his responsibility for such failure;

(ii) the extent of his responsibility for the causes of the company becoming insolvent; and

(iii) the extent of his responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(e) the director's, voluntary liquidator's or receiver's failure to comply with any obligation imposed on him under this Ordinance; and

(f) in the case of a voluntary liquidator, any failure to comply with the Companies Ordinance.

Disqualification undertaking

285. (1) A person against whom a disqualification order could be made under section 283 may offer the Official Assignee a disqualification undertaking, whether or not the Official Assignee has made an application against him under that section.

(2) The Official Assignee may accept an offer made to him under subsection (1) if he considers that—

(a) there is a reasonable prospect that, on the hearing of an application under section 283, the Court would make a disqualification order against the person offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A disqualification undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed ten years.

General provisions concerning disqualification orders and undertakings

286. (1) A disqualification order may be made, or a disqualification undertaking accepted, on grounds which are or include matters other than criminal convictions, even though the person concerned may be criminally liable in respect of those matters.

(2) If the Court makes a disqualification order, or the Official Assignee accepts a disqualification undertaking, the Official Assignee shall, within fourteen days of the date of the order or of his acceptance of the undertaking, file a notice in the approved form with the Registrar.

Variation of disqualification order or undertaking

287. (1) The Court may, on the application of a disqualified person, vary a disqualification order or a disqualification undertaking.

(2) Without limiting subsection (1), an order under that subsection may—

(a) reduce the period for which the disqualification order, or undertaking, is in force; or

(b) in the case of a disqualification undertaking, provide for it to cease to be in force.

(3) An application for an order under subsection (1) shall be served on the Official Assignee no less than fourteen days prior to the date of the hearing and the Official Assignee shall appear or be represented and is entitled to call or give evidence at the hearing.

(4) If the Court varies a disqualification order or undertaking, the Official Assignee shall, within fourteen days of the date of the order, file a notice in the approved form with the Registrar.

Disqualified person engaging in prohibited activities

288. A disqualified person who engages in a prohibited activity commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Liability for engaging in prohibited activity

289. (1) A person incurs personal liability for the debts of a company in accordance with subsection (2) if, without the leave of the Court—

(a) as a disqualified person, he is involved in the management of a company; or

(b) as a person involved in the management of a company, he acts on the instructions of a person he knows to be a disqualified person or an undischarged bankrupt.

(2) Subject to subsection (3), the liability of a person to whom subsection (1) applies is—

(a) to a liquidator of the company for every outstanding liability; and

(b) to a creditor of the company for a liability to that creditor,

incurred by the company at a time when subsection (1) applies to him.

(3) A creditor may not take action against a person under subsection (2)*(b)* if the company is in liquidation.

(4) For the purposes of subsection (1), a person is involved in the management of a company if—

(a) he is a director of the company; or

(b) he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the Court by a person whom he knew at that time to be a disqualified person or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Official Assignee to appear on certain applications

290. The Official Assignee shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses on the hearing of—

(a) an application by the Official Assignee for a disqualification order;

(b) an application made by any person for leave under this Part.

Register of Disqualification Orders and Undertakings

291. (1) The Official Assignee shall register in a Register of Disqualification Orders and Undertakings to be maintained by him for the purpose—

(a) each disqualification order or undertaking in respect of which notice is filed under section 286(2); and

(b) each variation of a disqualification order or undertaking in respect of which notice is filed under section 287(4).

(2) When a disqualification order or undertaking ceases to be in force, the Official Assignee shall delete the entry from the Register.

(3) The Register of Disqualification Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a disqualified person by virtue of an entry in the Register of Disqualification Orders.

Duties of office holders

292. (1) If it appears to the liquidator, administrator or administrative receiver of a company that the conduct of a director or former director of the company, either taken alone or taken together with his conduct as a director of any other company or companies, makes him unfit to be concerned in the management of companies, he shall, as soon as practicable, prepare a written report in the approved form and send it to the Official Assignee.

(2) The Official Assignee may by notice in writing require a liquidator, administrator or administrative receiver who has sent him a report under subsection (1) to—

(a) provide him with such information or explanations; or

(b) to produce such books, records or other documents,

as he may reasonably require for considering or preparing an application for an order under section 283.

(3) If a liquidator, administrator or administrative receiver fails to comply with a notice issued under subsection (2), the Court may, on the application of the Official Assignee, make an order directing compliance within the period specified in the order.

(4) The Court may order that the costs of and incidental to an application under subsection (3) shall be borne by the person against whom the order is made.

(5) A liquidator, administrator or administrative receiver who prepares a report under subsection (1) shall not disclose the report to the creditors' committee, if any, or to any person other than the Official Assignee.

(6) Subsection (5) does not prevent a liquidator, administrator or administrative receiver disclosing the report to any person properly employed or appointed by him, or acting for him, in the liquidation, administration or administrative receivership.

(7) A report provided to the Official Assignee under subsection (1) shall, in the absence of fraud or malice, be absolutely privileged for the purposes of the law of defamation.

(8) Subsection (7) shall not apply to the extent that the liquidator, administrator or administrative receiver, or a person to whom the report is disclosed under subsection (6), discloses the report to another person in breach of subsection (5).

(9) A person who fails to comply with an order made under subsection (3) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

PART XI

PERSONAL INSOLVENCY AGREEMENT

Preliminary

Interpretation for this Part

293. (1) In this Part—

"debtor" means an individual who intends to make or who has made a proposal under this Part;

"interested person" means—

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest;

(b) in relation to an asset not belonging to a debtor which is used or occupied by or in the possession of the debtor, the owner or lessor of the asset;

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress; and

(d) in relation to a guarantee of a liability of the debtor, the person entitled to enforce the guarantee.

(2) If the context allows, a reference in this Part—

(a) to the creditors of a debtor includes a class of creditors;

(b) to the extension of a moratorium period includes a further extension of the moratorium period;

(c) to a proposal includes the proposal as amended; and

(d) to the rejection of a proposal includes the deemed rejection of a proposal.

Personal insolvency agreement

294. (1) A personal insolvency agreement is a compromise between a debtor and his creditors, or one or more classes of creditors, proposed and approved in accordance with this Part, the implementation of which is supervised by a supervisor acting as a trustee or otherwise.

(2) Without limiting subsection (1), a personal insolvency agreement may—

(a) cancel all or any part of, or vary, a liability of the debtor;

(b) vary the rights of the debtor's creditors or the terms of a debt; and

(c) include any other provision that may be prescribed.

(3) Varying a liability or the terms of a debt under subsection (2)*(a)* or *(b)* may include—

(a) varying, adding or cancelling rights to interest; and

(b) varying the dates upon which a liability, or part of a liability, becomes due for payment.

(4) A personal insolvency agreement shall not, except with the written agreement of the secured creditor or the preferential creditor concerned—

(a) affect the right of a secured creditor of the debtor to enforce his security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than he would receive in the bankruptcy of the debtor had the bankruptcy commenced at the time of approval of the agreement.

(5) A personal insolvency agreement may provide for the supervisor—

(a) to carry on the business of the debtor or trade on his behalf;

(b) to realise assets of the debtor; or

(c) otherwise to administer or dispose of any of the debtor's funds.

(6) A personal insolvency agreement does not effect a release of any surety or co-debtor of the debtor unless the terms of the agreement expressly provide otherwise.

Licensees

295. (1) A licensee shall not enter into a personal insolvency agreement with his creditors under this Part without the written consent of the Commission and any agreement entered into in breach of this subsection is void and of no effect.

(2) If a proposal is made, or a personal insolvency agreement approved, in respect of a debtor that is or at any time has been a licensee—

(a) every notice or other document required to be sent to a creditor of the debtor under this Part shall also be sent to the Commission; and

(b) unless the applicant is the Commission, notice shall be given to the Commission of any application to the Court under this Part.

Proposal and appointment

Proposal for a personal insolvency agreement

296. (1) Any individual other than an undischarged bankrupt may make a written proposal under this Part and any personal insolvency agreement entered into by an undischarged bankrupt is void and of no effect.

(2) A proposal shall—

(a) be made to the debtor's creditors or any class or classes of his creditors; and

(b) nominate an eligible insolvency practitioner or the Official Assignee as interim supervisor to act in relation to the proposed personal insolvency agreement.

(3) The Official Assignee may not be nominated as interim supervisor without his written consent.

Procedure for proposal

297. (1) A debtor who intends to make a proposal under this Part shall provide the nominee or the Official Assignee with—

(a) a copy of the proposal;

(b) a statement of assets and liabilities made up to a date no earlier than four weeks prior to the date upon which it is provided to the nominee; and

(c) a notice of intention to appoint the nominee or Official Assignee as interim supervisor.

(2) The nominee or Official Assignee may accept appointment as interim supervisor, by delivering to the debtor a copy of the notice referred to in subsection (1)*(b)*, endorsed in accordance with the Insolvency Rules.

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when he delivers the endorsed notice to the debtor.

(4) The appointment of an interim supervisor is not effective unless he accepts appointment under subsection (2) within five business days of the date of receiving the notice of intention to appoint him as interim supervisor from the debtor.

Notification of appointment of interim supervisor

298. The interim supervisor, unless he is the Official Assignee, shall within two business days of his appointment file a copy of the notice of his appointment with the Official Assignee and, if the debtor is a licensee, with the Commission.

Functions of interim supervisor and power to obtain information

299. (1) The functions of an interim supervisor are—

(a) to prepare a report on the proposal for the Court;

(b) to carry out any duties assigned to him by this Ordinance or the Insolvency Rules or by the Court;

(c) to undertake such functions and duties as he may agree with the debtor.

(2) For the purposes of enabling the interim supervisor to exercise his functions, a debtor shall—

(a) provide to the interim supervisor such documents, information and explanations; and

(b) give the interim supervisor such assistance,

as he may reasonably require for the purposes of enabling him to exercise his functions.

(3) On the application of the interim supervisor, the Court may make an order requiring a debtor to comply with subsection (2).

(4) A debtor who fails to comply with an order of the Court made under subsection (3) commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $25,000 or to both.

Amendment or withdrawal of proposal before creditors' meeting

300. (1) A debtor may amend or withdraw a proposal in accordance with the Insolvency Rules—

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of a creditors' meeting has been given under section 308; or

(c) after notice of a creditor's meeting has been given under section 308 but before the date fixed for the meeting.

(2) A proposal cannot be amended or withdrawn otherwise than in accordance with this section or section 310.

Moratorium

Application for moratorium order

301. (1) A debtor who intends to make a proposal may apply to the Court for a moratorium order under this section if—

(a) he is entitled to apply to the Court for a bankruptcy order under section 332;

(b) an eligible insolvency practitioner or the Official Assignee has accepted appointment as interim supervisor under the proposal in accordance with section 297(2);

(c) no previous application for a moratorium has been made by the debtor during the twelve months immediately preceding the date of the application; and

(d) he is not a licensee.

(2) An application under subsection (1) shall be supported by an affidavit setting out such matters as may be prescribed and exhibiting—

(a) a copy of the proposal provided to the interim supervisor under section 297(1)*(a)*;

(b) a copy of the endorsed notice of appointment of the interim supervisor; and

(c) a statement of assets and liabilities.

(3) The debtor shall give two business days' notice of the hearing of an application under this section to—

(a) the interim supervisor; and

(b) any creditor who, to his knowledge, has applied to the Court for a bankruptcy order against him.

Court may grant stay

302. (1) At any time when an application under section 301 for a moratorium order is pending, the Court may, on the application of the debtor or the interim supervisor, stay any action, execution or other legal process against the debtor or his assets.

(2) Any court, or any tribunal in the Islands, in which proceedings are pending against a debtor may, on proof that an application under section 301 has been made by the debtor, either stay those proceedings or allow them to continue on such terms as it considers just.

Moratorium order

303. (1) The Court may make a moratorium order on an application under section 301 if it considers that it would be appropriate to do so for the purpose of facilitating the consideration of the debtor's proposal.

(2) The Court may, on making a moratorium order, require the interim supervisor to monitor the affairs of the debtor, including the conduct of any business carried on by the debtor, during the proposal period.

(3) Unless extended by the Court under this section, a moratorium order ceases to have effect at the end of the fourteenth day after the date upon which it is made.

(4) If the Court makes a moratorium order under subsection (1), it shall at the same time fix a venue for consideration of the interim supervisor's report under section 306, no later than the date of expiry of the moratorium order under subsection (3).

(5) In a case if the interim supervisor has failed to submit his report as required by section 306, the Court may, on the application of the debtor, direct that the moratorium order shall continue or, if it has ceased to have effect, be renewed for such further period as the Court may order.

(6) The Court may, on the application of the interim supervisor, extend the period for which the moratorium order has effect so as to enable the interim supervisor to have more time to prepare and submit his report under section 306.

(7) The Court may, at any time, discharge the moratorium order if it is satisfied, whether by reason of a report made to it by the interim supervisor under section 304 or otherwise—

(a) that the debtor has failed to comply with his obligations under section 299(2);

(b) that it would not be appropriate for a meeting of creditors to be called to consider the debtor's proposal; or

(c) that, for any other reason, it is appropriate for the moratorium order to be discharged.

(8) An order discharging the moratorium order may be made by the Court on the application of the debtor or the interim supervisor or on its own motion.

Duty of interim supervisor to report certain matters to the Court

304. The interim supervisor shall report to the Court forthwith if, at any time during the period when a moratorium order is in force—

(a) he forms the view that the proposed personal insolvency agreement no longer has a reasonable prospect of being approved or implemented; or

(b) the debtor fails to comply with his obligations under section 299(2).

Effect of moratorium order

305. (1) In the period during which a moratorium order is in force in respect of a debtor—

(a) no application for a bankruptcy order against the debtor may be presented or proceeded with;

(b) no bankruptcy order may be made against the debtor;

(c) no steps may be taken to enforce any security interest over the debtor's assets, except with the leave of the Court;

(d) no right of forfeiture by peaceable re-entry may be exercised in relation to premises let to the debtor, except with the leave of the Court;

(e) except with the leave of the Court, no steps may be taken to repossess assets in the possession of the debtor supplied to the debtor—

(i) under a hire purchase, conditional sale or chattel leasing agreement; or

(ii) subject to a retention of title agreement;

(f) no legal process, including legal proceedings and execution, may be commenced or continued or distress levied against the debtor or his assets, except with the leave of the Court.

(2) On an application for leave under subsection (1)*(c)* to *(e)*, the Court may grant leave subject to such terms and conditions as it considers appropriate.

(3) Subsection (1) does not prevent or require the leave of the Court to be obtained for—

(a) the enforcement of a security interest on assets belonging to a debtor if, before the order for a moratorium was made, an interested person lawfully—

(i) entered into possession of or assumed control of the assets; or

(ii) entered into a binding agreement to sell the assets,

for the purpose of enforcing the security interest on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a debtor if, before the order for a moratorium was made, an interested person lawfully entered into possession, or assumed control of those assets; or

(c) the exercise by a creditor of any set-off that he would have been entitled to exercise under section 151 if the debtor was in bankruptcy, the bankruptcy having commenced on the date that the moratorium order was made.

Consideration of proposal

Interim supervisor's report on debtor's proposal

306. (1) An interim supervisor shall, before the end of the relevant time limit specified in subsection (3), file with the Court a report including such matters as may be prescribed.

(2) An interim supervisor shall file with the report—

(a) if the debtor made an application for a moratorium order under section 301 and the proposal has since been amended, a copy of the amended proposal; or

(b) if the debtor has not made an application for a moratorium order, copies of the documents referred to in section 301(2)*(a)* to *(c)*.

(3) The relevant time limits for the purposes of subsection (1) are—

(a) if a moratorium order has been made, no less than two business days prior to the date of the hearing fixed under section 303(4); and

(b) in any other case, within fourteen days after the date of the appointment of the interim supervisor.

(4) The Court may, on the application of the interim supervisor, extend the period within which the interim supervisor shall submit his report under subsection (1) by such further period as it considers appropriate.

Extension of moratorium

307. (1) This section applies if a moratorium order is in force at the time when the interim supervisor files his report with the Court.

(2) If, on receiving the interim supervisor's report, the Court is satisfied that a meeting of creditors should be called to consider the debtor's proposal, the Court shall extend the period for which the moratorium order is in force for such further period as it may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with this Part and for the result of the creditors' meeting to be reported to the Court.

Calling creditors' meeting

308. Unless the Court otherwise orders, if the interim supervisor has reported to the Court that a meeting of creditors should be called, he shall—

(a) call a meeting of creditors at the venue and for the date proposed in his report, or such other venue or date as may be specified by the Court;

(b) send to each creditor, together with the notice of the meeting, a copy of the debtor's proposal, his report on the proposal and a copy of the debtor's statement of assets and liabilities; and

(c) cause the creditors' meeting to be advertised in accordance with the Insolvency Rules.

Business to be conducted at creditors' meeting

309. (1) At the meeting called under section 308, the creditors may resolve—

(a) to approve the proposal, with or without amendment, and appoint the interim supervisor, or such other eligible insolvency practitioner that may be specified in the proposal, or the Official Assignee, to be the supervisor of the personal insolvency agreement;

(b) to adjourn the meeting to a date no later than twenty-eight days after the date for which the meeting was originally called; or

(c) to reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if—

(a) the proposal does not comply with section 294(4);

(b) the proposal has been amended without the consent of the debtor; or

(c) the proposal has been amended otherwise than in accordance with section 300 or section 310.

(3) The proposal is deemed to be rejected, and the creditors' meeting concluded, if—

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) On the rejection of a proposal the proposal period ends and the appointment of the interim supervisor is terminated.

(5) References in this section to a meeting include, if the meeting is adjourned, the adjourned meeting.

(6) If a meeting of creditors is adjourned, the interim supervisor shall forthwith file a notice of the adjournment with the Court and the Court may, on the application of the debtor or the interim supervisor, extend the period for which the moratorium order is in force for such further period as it may specify for the purpose of enabling the adjourned meeting to be held and for the result to be reported to the Court.

(7) References in this section and section 310 to a meeting include, if the meeting is adjourned, an adjourned meeting.

Amendment or withdrawal of proposal at creditors' meeting

310. (1) If, at a meeting held under section 308, the creditors wish to approve an amended proposal that has not been amended in accordance with section 300, the meeting shall be adjourned for sufficient time to enable the chairperson of the meeting to give all creditors not present or represented at the meeting at least two business days' notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) If a meeting is adjourned under subsection (1), section 309 applies to the adjourned meeting.

(3) Subsection (1) does not apply—

(a) if every creditor who was given notice of the meeting under section 308 is present or represented at the meeting; or

(b) if the chairperson certifies in writing that an amendment is to correct minor errors or is otherwise not material.

(4) The debtor may withdraw a proposal at a creditors' meeting called under section 308 in accordance with the Insolvency Rules.

Interim supervisor to report outcome of creditors' meeting to Court

311. (1) The interim supervisor shall, within four business days of the date of the conclusion of the creditors' meeting—

(a) file with the Court a report of the meeting complying with the Insolvency Rules;

(b) if the personal insolvency agreement was approved—

(i) file a notice of the agreement with the Official Assignee; and

(ii) if the debtor is a licensee, file notice of the agreement with the Commission.

(2) If a report filed under subsection (1)*(a)* states that the meeting has rejected the proposal or that it was withdrawn by the debtor under section 310(4), any moratorium order in force is discharged with effect from the end of the fourth business day after the conclusion of the meeting unless the Court otherwise orders.

(3) The chairperson of the meeting shall, as soon as practicable after filing his report with the Court, send a notice stating the result of the meeting to all creditors of the debtor.

Effect of approval of proposal

312. (1) If the meeting of creditors called under section 308 approves the proposed personal insolvency agreement, the agreement—

(a) takes effect as if made by the debtor at the meeting; and

(b) is binding on the debtor and each creditor of the debtor as if he were a party to the agreement.

(2) For the purposes of subsection (1), a person is a creditor of the debtor if he has a claim against the debtor that would be an admissible claim in the bankruptcy of the debtor commencing at the time of the approval of the agreement.

(3) If a personal insolvency agreement is between the debtor and a class or classes of creditor, the agreement is binding on a creditor only in relation to any debt due to him as a creditor of the relevant class or classes.

(4) Subject to section 324, any moratorium order in force in relation to the debtor immediately before the end of the period of twenty-eight days beginning with the day on which the report with respect to the creditors' meeting was filed with the Court under section 311 ceases to have effect at the end of that period.

(5) If proceedings on an application for a bankruptcy order have been stayed by a moratorium order which ceases to have effect under subsection (4), that application is deemed, unless the Court otherwise orders, to have been dismissed.

Personal insolvency agreement ceasing to have effect

313. (1) If—

(a) when a personal insolvency agreement ceases to have effect any amount payable under the agreement to a person bound by the agreement has not been paid; and

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

the debtor shall, at that time, become liable to pay to that person the amount payable under the agreement.

(2) For the purposes of subsection (1), a personal insolvency agreement comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the agreement.

Implementation of agreement

Supervisor's functions and powers

314. (1) The supervisor has such functions and powers as are provided for by a personal insolvency agreement and, if authorised by the agreement, may carry on the debtor's business or trade on his behalf.

(2) After the approval of a personal insolvency agreement the debtor shall forthwith take all necessary steps to put the supervisor into possession of the assets included in the agreement.

(3) If joint supervisors of a personal insolvency agreement are appointed, they may act jointly or severally unless the agreement provides otherwise.

Supervisor's duty to keep accounting records

315. (1) If a personal insolvency agreement permits or requires the supervisor—

(a) to carry on the debtor's business or trade on his behalf;

(b) to realise assets of the debtor; or

(c) otherwise to administer or dispose of any of the debtor's funds,

the supervisor shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to his acts and dealings in and in connection with the agreement.

(2) The supervisor shall retain the accounting records kept under subsection (1) for a period of not less than six years after the termination of the agreement.

Supervisor to prepare and send out regular accounts and reports

316. (1) The supervisor shall prepare accounts of his receipts and payments, if any, and reports concerning the progress and efficacy of a personal insolvency agreement covering the periods specified in subsection (2).

(2) The accounts and reports prepared under subsection (1) shall cover—

(a) the period of twelve months following the supervisor's appointment;

(b) each subsequent period of twelve months; and

(c) if the supervisor ceases to act as supervisor—

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he acted as supervisor for less than twelve months from the date of his appointment, to the date of his ceasing to act; and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless prepared in accordance with subparagraph (i).

(3) The supervisor shall, within sixty days of the last day of the period covered by the accounts—

(a) file a copy of the accounts and his report with the Court; and

(b) send a copy of the accounts and his report to—

(i) the Official Assignee;

(ii) the debtor; and

(iii) each creditor of the debtor who is bound by the agreement.

Completion or premature termination of personal insolvency agreement

317. (1) If a personal insolvency agreement is completed or terminated prematurely, the supervisor shall, within twenty-eight days of its completion or termination, file a notice of completion or termination with the Court and send a copy of the notice to the debtor and to each creditor of the debtor who is bound by the agreement.

(2) If a personal insolvency agreement is completed or terminated, the report prepared under section 316(2)*(c)* shall explain any difference between the implementation of the agreement and the proposal approved by the creditors.

Modification of personal insolvency agreement

Modification of personal insolvency agreement

318. (1) In this section—

(a) "creditor", in relation to a personal insolvency agreement, means a creditor bound by that agreement; and

(b) "proposal" means a proposal to modify a personal insolvency agreement.

(2) If the supervisor of a personal insolvency agreement considers it appropriate, he may propose a modification of the agreement at a meeting of creditors called for such a purpose.

(3) The supervisor shall call a meeting of creditors under subsection (2) by sending to each creditor—

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Insolvency Rules.

(4) The supervisor shall send a copy of the notice of the meeting and his report on the proposed modification to the debtor and to the Official Assignee.

(5) Unless the Insolvency Rules otherwise provide, sections 309 and 311 and the relevant provisions of the Insolvency Rules apply, with suitable modifications, to a meeting called under this section.

(6) If a proposal to modify a personal insolvency agreement is approved—

(a) the modified agreement is binding on the debtor and on each creditor of the debtor as if he had agreed to the modification; and

(b) the provisions of this Part applicable to a personal insolvency agreement apply to the modified agreement.

(7) A personal insolvency agreement may not be modified otherwise than in accordance with this section.

Remuneration

Remuneration of interim supervisor and supervisor

319. A supervisor and an interim supervisor is entitled to be paid remuneration and expenses for his services consisting of—

(a) any disbursements made by the interim supervisor prior to the approval of the personal insolvency agreement, and any remuneration for his services as such agreed between himself and the debtor; and

(b) any fees, costs, charges or expenses which—

(i) are sanctioned by the terms of the agreement; or

(ii) would be payable, or correspond to those which would be payable, in a bankruptcy.

Fixing of remuneration by Court

320. (1) Notwithstanding the terms of a personal insolvency agreement, on the application of a person referred to in subsection (4), the Court may review and fix the amount paid or to be paid by way of remuneration and expenses to a supervisor or an interim supervisor.

(2) Subject to subsection (3), the Court's power under subsection (1)—

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

(b) is exercisable even though the supervisor or interim supervisor has died or ceased to act before the making of the application or the order; and

(c) extends to requiring the supervisor or interim supervisor or his personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by the supervisor or interim supervisor as remuneration or expenses exceeds that fixed by the Court for the period concerned.

(3) The power conferred by subsection (2)*(c)* may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(4) Application to the Court for an order under subsection (1) may be made by any of the following persons—

(a) the supervisor or interim supervisor; or

(b) the debtor.

(5) In fixing the remuneration of a supervisor or interim supervisor under this section, the Court shall apply the general principles specified in section 464.

Applications to Court

Appointment of interim supervisor or supervisor by Court

321. (1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner be appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made—

(a) by the debtor or the Official Assignee, if—

(i) the interim supervisor has failed to submit the report required by section 306;

(ii) the supervisor or interim supervisor has failed to comply with a duty imposed upon him under this Part or has died;

(b) by the debtor or the supervisor or interim supervisor if it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act; or

(c) by the Official Assignee, if the licence of the supervisor or interim supervisor is suspended or revoked.

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

Application in respect of moratorium

322. (1) If a moratorium order is or has been in force in respect of a debtor, the Court may, on an application made by the debtor, the supervisor or interim supervisor, a creditor, a person affected by the moratorium or, if the individual is a licensee, by the Commission—

(a) give directions to the supervisor or interim supervisor in relation to any matter arising in connection with the moratorium;

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

(c) terminate the moratorium order and make such consequential provisions as it considers appropriate; or

(d) make such other order, whether in relation to the supervisor or interim supervisor, the debtor or otherwise as it considers appropriate.

(2) Without limiting subsection (1)*(d)*, an order under that paragraph—

(a) may require the debtor to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he has omitted to do;

(b) may require the calling of a meeting of creditors for the purpose of considering such matters as the Court may direct; and

(c) may make such provision as the Court considers necessary to protect the interests of one or more creditors in the period during which the moratorium order is in force.

(3) An application under subsection (1) may be made during the period in which the moratorium order is in force or after the moratorium order has been discharged.

(4) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the debtor in good faith and for value.

Application to Court for directions and other orders if personal insolvency agreement approved or modified

323. (1) If a personal insolvency agreement is approved or modified, the Court may, on an application made by a person specified in subsection (2)—

(a) give directions to the supervisor in relation to any matter arising in connection with the agreement;

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

(c) make such other order as it considers appropriate.

(2) Application under subsection (1) may be made by the supervisor, by the debtor, by a creditor of the debtor, by a surety of a liability of the debtor, by a co-debtor of the debtor, by a person affected by the agreement or, if the individual is a licensee, by the Commission.

Application on grounds of unfair prejudice or material irregularity

324. (1) An application may be made by a person specified in subsection (2) for an order under section 325 on one or both of the following grounds—

(a) that a personal insolvency agreement approved or modified by the creditors at a meeting called under section 308 unfairly prejudices the interests of a creditor, surety or co-debtor; or

(b) that there has been a material irregularity at or in relation to the meeting at which the agreement was approved or modified.

(2) An application for an order under subsection (1) may be made—

(a) under subsection (1)*(a)*, by—

(i) the supervisor; or

(ii) a creditor, surety or co-debtor of the debtor who claims his interests have been unfairly prejudiced;

(b) under subsection (1)*(b)*, by—

(i) the supervisor or the person who, immediately prior to the approval of the agreement, acted as interim supervisor;

(ii) a creditor of the debtor; or

(iii) if the individual is a licensee, the Commission.

Powers of Court on application under section 324

325. (1) If it is satisfied as to either of the grounds specified in section 324(1), the Court may—

(a) revoke or suspend—

(i) any decision approving or modifying the agreement; or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity; and

(b) give a direction to any person—

(i) for the calling of a further meeting to consider any amended proposal for a personal insolvency agreement that the supervisor or the debtor may make;

(ii) for the calling of a further meeting to consider any amended proposal for a modification of the agreement that the supervisor may make;

(iii) if there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the agreement or for the modification of a personal insolvency agreement.

(2) If at any time after giving a direction under subsection (1)*(b)*(i), the Court is satisfied that the debtor does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the agreement or the modification of the agreement.

(3) If the Court, on an application under this section gives a direction under subsection (1)*(b)* or revokes or suspends a decision under subsection (2), the Court may—

(a) direct that any moratorium order in place be continued or, if it has ceased to have effect, be renewed for such further period as the Court may order; and

(b) give such supplemental directions as it considers appropriate and, in particular, directions with respect to things done under the agreement since it took effect.

(4) Except as provided in this section, a decision taken at a meeting called under section 308 or section 318 is not invalidated by any irregularity at or in relation to the meeting.

(5) Without limiting subsection (1)*(a)*, the interests of a member, creditor, surety or co-debtor of the debtor are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

(6) Subject to subsection (7), no application under this section shall be made after the agreement has been completed or has prematurely terminated.

(7) A creditor who did not participate in the approval of a personal insolvency agreement may make an application under this section after the completion of a personal insolvency agreement if, when the agreement was completed, he was unaware of the agreement.

(8) An application under subsection (7) shall be made within four weeks of the creditor first becoming aware of the agreement.

(9) For the purposes of this section, a creditor does not participate in the approval of a personal insolvency agreement if, for whatever reason—

(a) he was not given notice of the meeting of creditors called to consider the proposal; and

(b) he did not attend the meeting at which the agreement was approved, whether in person or by proxy.

Miscellaneous

Register of personal insolvency agreements

326. (1) The Official Assignee shall maintain a register of personal insolvency agreements made under this Part and shall record in the register all matters that are required to be reported to him under this Part or under the corresponding Part in the Insolvency Rules.

(2) A member of the public is entitled to inspect the register maintained under subsection (1) on payment of the prescribed fee.

False representations

327. (1) A debtor who makes any false representation or who fraudulently does, or omits to do, anything for the purpose of obtaining the approval of his creditors to a personal insolvency agreement commits an offence and is liable—

(a) on summary conviction, to a fine of $25,000;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

(2) Subsection (1) applies whether or not the proposal is approved.

PART XII

BANKRUPTCY

Preliminary

Interpretation for this Part

328. In this Part—

"debtor" means the individual to whom an application for a bankruptcy order relates;

"prescribed minimum" means the minimum amount of the debt for which a statutory demand may be issued; and

"trustee" means the bankruptcy trustee of a bankrupt.

Bankruptcy order and commencement of bankruptcy

329. (1) A bankruptcy order is an order of the Court vesting the assets of an individual in a bankruptcy trustee appointed by the Court for the purposes of division amongst his creditors in accordance with this Part.

(2) The bankruptcy of an individual commences at the time at which the bankruptcy order is made and continues until the bankrupt is discharged under section 414 or 417.

Application for and making of bankruptcy order

Grounds for bankruptcy order

330. (1) The Court shall not make a bankruptcy order against a debtor under this Part unless it is satisfied—

(a) that on the date that the application was filed, the debtor—

(i) was ordinarily resident in the Islands;

(ii) was personally present in the Islands; or

(iii) had a place of residence or a place of business in the Islands;

(b) that at any time in the period of three years prior to the date that the application was filed, the debtor—

(i) had carried on business in the Islands, either personally or by means of an agent or manager;

(ii) had been a member of a partnership carrying on business in the Islands by means of a partner or partners or of an agent or manager;

(c) that the debtor has or appears to have assets in the Islands; or

(d) that there is a reasonable prospect that the making of a bankruptcy order will benefit the creditors of the debtor.

(2) For the purposes of subsection (1)*(b)*, a debtor or a partnership is deemed to be carrying on business in the Islands if liabilities incurred in the course of a business formerly carried on in the Islands remain unpaid.

Application for a bankruptcy order

331. (1) Application to the Court for a bankruptcy order in respect of a debtor may be made—

(a) by the debtor himself under section 332;

(b) by a creditor of the debtor, or by one or more of his creditors jointly, under section 333;

(c) by the supervisor of a personal insolvency agreement or by a creditor of the debtor under section 338**.**

(2) If two or more applications for bankruptcy orders are presented against the same debtor, the Court may consolidate the proceedings or any of them on such terms as it considers appropriate.

(3) An application for a bankruptcy order may not be withdrawn except with the leave of the Court.

Application by debtor

332. (1) The Court may make a bankruptcy order against a debtor on the application of the debtor himself if it is satisfied—

(a) that the debtor is unable to pay his debts as they fall due;

(b) that the unsecured liabilities of the debtor exceed the prescribed minimum; and

(c) that, if a bankruptcy order is made, the value of the debtor's assets available for distribution to his unsecured creditors will exceed the prescribed minimum.

(2) An application for a bankruptcy order filed by a debtor under subsection (1) shall be accompanied by a verified statement of his assets and liabilities.

Creditor's application

333. (1) A creditor's application for a bankruptcy order may only be made in respect of a liability or liabilities if, at the time of the application—

(a) the amount of the liability owed to the creditor applying for the order, or the aggregate amount of the liabilities, exceeds the prescribed minimum; and

(b) the liability, or each of the liabilities, is for a liquidated sum payable to the applicant creditor immediately.

(2) An application under subsection (1) may not be made in respect of a liability incurred outside the Islands unless the liability is payable by the debtor to the creditor by virtue of a judgment or award enforceable by execution in the Islands.

Substitution of applicant

334. (1) In the circumstances specified in subsection (2), the Court may, by order, substitute as applicant in a creditor's application for a bankruptcy order, a creditor—

(a) who has given notice of his intention to appear at the hearing of the application in accordance with the Insolvency Rules;

(b) who would otherwise have been entitled to make such an application on the date that the original application was made; and

(c) who consents to being substituted as the applicant.

(2) The Court may make a substitution order under subsection (1) if it considers it appropriate to do so—

(a) because the applicant applies to withdraw the application or consents to it being dismissed;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) because the applicant is not entitled to make the application; or

(d) for any other reason.

Application by secured creditor

335. (1) If the applicant for a bankruptcy order is a secured creditor, he shall in his application state the full amount of the liability of the debtor to him and—

(a) state that he is willing, in the event of a bankruptcy order being made, to give up his security interest for the benefit of the other creditors of the bankrupt; or

(b) give an estimate of the value of his security interest and make the application in respect of the full amount of the liability of the debtor to him less the estimated value of his security interest.

(2) In a case falling within subsection (1)*(b)*, the secured creditor is treated as an unsecured creditor in respect of the unsecured liability of the debtor to him.

Secured creditor failing to disclose security interest

336. (1) Subject to subsection (2), a secured creditor who fails to disclose his security interest in an application for a bankruptcy order against a debtor is, in the event that a bankruptcy order is made on the application, deemed to have given up his security interest for the benefit of the other creditors of the bankrupt.

(2) If on the application of a secured creditor the Court is satisfied that the failure of the creditor to disclose his security interest was inadvertent or due to an honest mistake, it may disapply subsection (1) subject to such terms and conditions as it considers appropriate.

(3) If subsection (1) applies, the secured creditor concerned—

(a) is not entitled to enforce his security interest against the estate of the bankrupt or to retain any proceeds from the realisation of the security interest; and

(b) shall execute such document of release as is required by the trustee or account and pay over to the trustee all proceeds from any realisation of his security interest.

(4) If a secured creditor fails to execute a document of release as required by subsection (3)*(b)*, the trustee may apply to the Court for an order that the trustee may execute the document on his behalf and, if the Court makes such an order, the execution of the document by the trustee takes effect as if executed by the secured creditor.

(5) A secured creditor who fails to account or pay to the trustee the proceeds from any realisation of his security interest in accordance with subsection (3)*(b)* commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Hearing of creditor's application

337. (1) Subject to subsection (2), the Court may make a bankruptcy order on an application made by a creditor if it is satisfied that the debtor is presumed insolvent within the meaning of section 5(2)*(a)*, and—

(a) if the debtor has failed to comply with the requirements of a statutory demand, the demand was made by the creditor making the application; or

(b) if execution or other process has been returned unsatisfied, the debt is payable to the creditor making the application.

(2) The Court shall not make a bankruptcy order under subsection (1) unless it is satisfied that—

(a) the debt, or 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 nor compounded for; and

(b) if the debtor does not appear at the hearing, he has been served with the application.

(3) The Court may dismiss an application made by a creditor if—

(a) it is not satisfied with the proof of the liability or liabilities in respect of which the application is made;

(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 discharge all his liabilities;

(d) it is satisfied that the debtor has made an offer to secure or compound for a liability in respect of which the application is made, the acceptance of which would have required the dismissal of the application and that offer has been unreasonably refused by the creditor making the application;

(e) it is satisfied that for some other sufficient reason, a bankruptcy order ought not to be made.

(4) Nothing in section 333 or in this section limits the power of the Court, in accordance with the Insolvency Rules, to authorise a creditor's application to be amended by the omission of any creditor or liability.

(5) If an application is amended under subsection (4), the Court may order that the application is proceeded with as if anything done for the purposes of this section or section 333 had been done only by or in relation to the remaining creditors or debts.

Application if personal insolvency agreement in place

338. (1) If a personal insolvency agreement has been approved under Part XI and has not been completed or otherwise come to an end, the Court may make a bankruptcy order against a debtor on the application of the supervisor or a creditor bound by the agreement if it is satisfied—

(a) that the debtor has failed to comply with his obligations under the agreement;

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of assets and liabilities or other document supplied by the debtor under Part XI to any person; or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part; or

(c) that the debtor has failed to do all such things as may for the purposes of the agreement have been reasonably required of him by the supervisor of the agreement.

(2) If a bankruptcy order is made on an application under subsection (1), any remuneration of the supervisor is a first charge on the bankrupt’s estate.

Hearing of application for bankruptcy order

339. (1) On the hearing of an application for a bankruptcy order under section 332, section 333 or section 338, the Court may—

(a) make a bankruptcy order;

(b) if it appears appropriate to do so on the grounds that there has been a contravention of the Insolvency Rules or for any other reason, dismiss the application or stay proceedings on the application on such terms and conditions as it considers appropriate;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers appropriate.

(2) If the Court makes a bankruptcy order, it shall appoint either the Official Assignee or an eligible insolvency practitioner to be the bankruptcy trustee of the bankrupt.

Period for determination of application

340. (1) Subject to subsection (2), an application for a bankruptcy order shall be determined within three months after it is filed.

(2) The Court may, upon such conditions as it considers appropriate, extend the period referred to in subsection (1) for a period of, or if it grants more than one extension for an aggregate period of, three months if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

Interim receiver

Protection of assets after application for bankruptcy order

341. (1) If an application for a bankruptcy order has been filed in respect of a debtor but not yet determined or withdrawn, the Court may, if it considers it necessary for the protection of the debtor's assets—

(a) by order, appoint the Official Assignee or an eligible insolvency practitioner as interim receiver to take control of—

(i) the debtor's assets, or any part of them; and

(ii) such books or other documents of the debtor as may be specified in the order; and

(b) make any other order in relation to the debtor's assets.

(2) An application for an order under subsection (1) may be made by—

(a) the applicant for the bankruptcy order;

(b) the debtor himself; or

(c) any creditor of the debtor.

(3) An order under subsection (1) may be made on such terms as the Court considers appropriate and may, as a condition precedent, require the applicant to deposit at Court such sum as the Court considers reasonable to cover the remuneration and expenses of the interim receiver.

(4) An order under subsection (1) remains in effect until the earlier of—

(a) the discharge of the order by the Court of its own motion or on the application of—

(i) the Official Assignee or eligible insolvency practitioner appointed under subsection (1)*(a)*; or

(ii) any person specified in subsection (2); or

(b) the determination or withdrawal of the application for a bankruptcy order,

whereupon the appointment of the interim receiver is terminated.

(5) On the order ceasing to have effect, the Court may give such directions or make such order with respect to the accounts of the administration of the appointee, or to any other matter, as it considers appropriate.

Restrictions whilst section 341 order in effect

342. Whilst an order under section 341(1) is in effect, unless the leave of the Court has been obtained—

(a) no steps may be taken to enforce any security interest over the debtor's assets;

(b) no right of forfeiture by peaceable re-entry may be exercised in relation to premises let to the debtor;

(c) no steps may be taken to repossess assets in the possession of the debtor supplied to the debtor—

(i) under a hire purchase, conditional sale or chattel leasing agreement; or

(ii) subject to a retention of title agreement;

(d) no legal process, including legal proceedings and execution, may be commenced or continued or distress levied against the debtor or his assets.

Termination of appointment of interim receiver

343. (1) The Court may, on the application of the interim receiver or of any person specified in section 341(2) or on its own motion, terminate the appointment of the interim receiver.

(2) If the Court has not previously terminated the appointment of the interim receiver under subsection (1), it terminates on—

(a) the determination by the Court of the application for a bankruptcy order; or

(b) the Court granting the applicant leave to withdraw the application under section 331(3).

(3) On the termination of the appointment of the interim receiver, the Court may give such directions or make such order with respect to the accounts of his administration, or to any other matters, as it considers appropriate.

Remuneration of interim receiver

344. (1) The interim receiver is entitled to be paid such remuneration as the Court may order applying the general principles specified in section 464 and to be reimbursed for the expenses that he has properly incurred.

(2) Subject to subsections (3) and (4), the remuneration ordered to be paid under subsection (1) and his properly incurred expenses are payable—

(a) if a bankruptcy order is not made, out of the assets of the debtor;

(b) if a bankruptcy order is made, out of the bankrupt's estate in accordance with the prescribed priority.

(3) If a bankruptcy order is not made, the Court may order the applicant for the order under section 341 to pay or contribute to the remuneration and expenses of the interim receiver if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in making the application.

(4) If the assets of the debtor are not sufficient to pay the remuneration ordered to be paid by the Court under subsection (1) and the interim receiver's expenses, the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the order under section 341.

(5) Unless the Court otherwise orders, if subsection (2)*(a)* applies, the Official Assignee, or the insolvency practitioner appointed under section 341(1)*(a)*, may retain out of the debtor's assets such sums or assets as are, or may be, required for meeting his remuneration and expenses.

Examination of debtor

345. The interim receiver may apply for an order to examine the debtor under section 407, and sections 407 to 411 apply as if—

(a) references to the Official Assignee or the trustee were to the interim receiver; and

(b) references to the bankrupt and to his estate were to the debtor and his assets.

Effect of bankruptcy

Effect of bankruptcy order

346. On the making of a bankruptcy order, the assets comprised in the bankrupt's estate—

(a) vest in his trustee without any conveyance, assignment or transfer; and

(b) become divisible among his creditors in accordance with this Ordinance and the Insolvency Rules.

Power to stay or restrain proceedings

347. (1) An order under subsection (2) or (3) may be made—

(a) after an application for a bankruptcy order has been filed against an individual but not yet determined; or

(b) while an individual is an undischarged bankrupt.

(2) At any time during either period specified in subsection (1)—

(a) the Court may stay any action, proceeding, execution, distress or other legal process against the person or the assets of the individual concerned; and

(b) any court in which proceedings are pending against any individual may either stay the proceedings or allow them to continue on such terms as it considers appropriate.

(3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt that may be claimed in the bankruptcy shall—

(a) have any remedy against the assets or person of the bankrupt in respect of that debt; or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the Court and in such terms as the Court may impose.

(4) This section—

(a) does not affect the right of a secured creditor to enforce his security; and

(b) is subject to sections 391 (enforcement procedures) and section 392 (limited right to distress).

Bankrupt's estate

Definition of bankrupt's estate

348. (1) Subject to section 349 and subsection (2), the bankrupt's estate comprises—

(a) all assets belonging to or vested in the bankrupt at the date of the bankruptcy order;

(b) assets claimed by the trustee under section 354 or 355; and

(c) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of assets as might have been exercised by the bankrupt for his own benefit at the date of the bankruptcy order.

(2) Subsection (1) does not apply to—

(a) assets held by the bankrupt on trust for any other person;

(b) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment or business;

(c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family;

(d) any rights of the bankrupt under a pension scheme excluded by an order of the Court made under section 349; and

(e) any asset of the bankrupt which is excluded from his estate under any other law.

(3) The assets comprised in a bankrupt's estate are divisible amongst his creditors in accordance with this Part.

(4) Assets comprised in a bankrupt's estate are subject to the rights of any person other than the bankrupt in relation to those assets, whether as a secured creditor of the bankrupt or otherwise, but disregarding—

(a) any rights given up under section 335(1)*(a)*; and

(b) any rights which have been otherwise given up in accordance with the Insolvency Rules.

(5) Unless the context otherwise requires, a reference in this Part to the assets of the bankrupt means the assets comprised in the bankrupt's estate.

Application to Court in relation to rights under pension schemes

349. (1) The bankrupt may, within four months of the date of the bankruptcy, apply to Court for an order that his rights, or part of his rights, under a pension scheme be excluded from his estate.

(2) In deciding whether to make an order under this section, the Court shall take account of—

(a) the future likely needs of the bankrupt and his family;

(b) whether any benefits, by way of pension or otherwise, are likely to be received by virtue of the bankrupt's rights under any other pension scheme or arrangements and, if so, the extent to which they appear to be likely to be adequate for meeting the needs specified in paragraph *(a)*; and

(c) whether any contributions made to the scheme prior to the commencement of the bankruptcy, whether made by the bankrupt or on his behalf, unfairly prejudiced the bankrupt's creditors.

(3) In making a determination under subsection (2)*(c)*, the Court shall consider, in particular—

(a) whether any contributions made to the pension scheme were made for the purpose of putting assets beyond the reach of the bankrupt's creditors, or any of them; and

(b) whether the amount of the contributions, or any of them, was excessive in view of the bankrupt's circumstances when the contributions were made.

(4) The Insolvency Rules may specify criteria for determining whether an arrangement is a pension scheme with subsection (1).

Acquisition by trustee of control of bankrupt's estate

350. (1) A trustee shall forthwith after the making of a bankruptcy order take possession of—

(a) all documents which relate to the bankrupt's estate or affairs and which belong to him or are under his control, including documents which would be privileged from disclosure in any proceedings; and

(b) all assets of the bankrupt that are capable of manual delivery.

(2) A trustee is, in relation to and for the purposes of acquiring or retaining possession of the assets of the bankrupt, in the same position as a receiver of the assets appointed by the Court, and the Court may, on his application, enforce the acquisition or retention accordingly.

(3) If any part of the bankrupt's estate consists of stock, shares or shares in a ship or any other assets transferable in the books of a company, office or person, the trustee may exercise the right to transfer the assets to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) If any part of the estate consists of things in action, they are deemed to have been assigned to the trustee.

(5) Notice of the deemed assignment of things in action under subsection (4) need not be given except in so far as it is necessary, in a case if the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

Goods subject to pledge or other security

351. (1) If any goods of a bankrupt are held by any person by way of pledge or other security, the trustee of the bankrupt may, after giving notice of his intention to do so, inspect the goods.

(2) If a person receives a notice under subsection (1), he is not entitled to realise his security unless he has given the trustee a reasonable opportunity to inspect the goods and, if the goods are comprised in the estate of the bankrupt, to exercise the bankrupt's right of redemption.

Duties of bankrupt in relation to his assets and affairs

352. (1) If a bankruptcy order has been made, the bankrupt shall—

(a) make discovery of and deliver to his trustee all the assets comprised in his estate that are in his possession or control; and

(b) deliver to his trustee all documents in his possession or control which relate to his assets or affairs, including any documents which, in any proceedings, would be privileged from disclosure.

(2) If the bankrupt is unable to deliver any assets comprised in his estate to his trustee, the bankrupt shall do everything reasonably required by his trustee to protect those assets.

(3) The bankrupt shall—

(a) give his trustee such information concerning his assets and affairs;

(b) attend on him at such times; and

(c) do all such other things,

as his trustee may reasonably require for the purposes of carrying out his functions under this Ordinance.

(4) If at any time after the time of the bankruptcy order any assets are acquired by, or devolve on, the bankrupt or there is an increase in the bankrupt's income, he shall, within twenty-one days of becoming aware of the assets or increased income, give the trustee notice of the assets or of the increased income.

(5) Subsection (3) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Delivery up by other persons

353. (1) Any person who holds assets to the account of, or for, the bankrupt shall pay or deliver to the trustee the assets in his possession or under his control unless he is, by law, entitled to retain the assets against the bankrupt or the trustee.

(2) Any person who, without reasonable excuse, fails to comply with any obligation imposed by this section, commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

After-acquired assets

354. (1) Subject to sections 348(2) and 357, the trustee may, by notice in writing served on the bankrupt, claim for the bankrupt's estate any assets which have been acquired by, or have devolved upon, the bankrupt after the date of the bankruptcy order but prior to the date of his discharge.

(2) Subject to subsection (3), on the service of a notice under subsection (1) on the bankrupt, the assets to which the notice relates vest in the trustee as part of the bankrupt's estate and the trustee's title to those assets relates back to the time at which the assets were acquired by, or devolved upon, the bankrupt.

(3) If, whether before or after service of a notice under this section—

(a) a person acquires assets in good faith, for value and without notice of the bankruptcy; or

(b) a banker enters into a transaction in good faith and without such notice,

the trustee is not in respect of those assets or that transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any assets derives from that person or banker.

(4) For the purposes of this section, a reference to "assets" does not include any asset which, as part of the bankrupt's income, may be the subject of an income payments order under section 358.

Vesting in trustee of certain items of excess value

355. (1) Subject to section 357, if—

(a) assets are excluded from the bankrupt's estate by virtue of section 348(2)*(b)* or *(c)*; and

(b) it appears to the trustee that the realisable value of those assets or any of them exceeds the cost of a reasonable replacement,

the trustee may, by notice in writing served on the bankrupt, claim the asset or assets for the bankrupt's estate.

(2) On the service on the bankrupt of a notice under subsection (1), the assets to which the notice relates vest in the trustee as part of the bankrupt's estate and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to those assets has relation back to the date of the bankruptcy order.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any assets vested in him under this section and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section, an asset is a reasonable replacement for another asset if it is reasonably adequate for meeting the needs met by the other asset.

Money provided in lieu of sale

356. (1) A third party may offer the trustee a sum of money to enable the bankrupt to be left in possession of assets which would otherwise vest in the trustee under section 346.

(2) The trustee may accept an offer made under subsection (1) if he is satisfied that it is a reasonable offer and that the estate will benefit to the extent of the value of the assets in question less the cost of a reasonable replacement.

Time limit for notice under sections 354 or 355

357. (1) Except with the leave of the Court, a notice may not be served—

(a) under section 354, after the end of the period of forty-two days beginning with the day on which it first came to the knowledge of the trustee that the assets in question had been acquired by, or had devolved upon, the bankrupt;

(b) under section 355, after the end of the period of forty-two days beginning with the day on which the assets in question first came to the knowledge of the trustee.

(2) For the purposes of this section—

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes to the knowledge of a person before he is the trustee, otherwise than under paragraph *(a)*, is deemed to come to his knowledge on his appointment taking effect.

Income payments orders

358. (1) The Court may, on the application of the trustee, make an income payments order claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

(2) The Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payments of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order; or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

(5) Subject to section 417(1)*(c)*(i), an income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge.

(6) Subject to subsection (7), for the purposes of this section, the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and any payment under a pension scheme.

(7) The Insolvency Rules may provide that pension payments paid to the bankrupt up to a maximum amount specified in those Rules are exempt from subsection (6).

Bankrupt's home

Rights of occupation of bankrupt

359. (1) This section applies if—

(a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt; and

(b) any persons under the age of eighteen years with whom that person had at some time occupied that dwelling house had their home with that person at the time when the application for a bankruptcy order was made and at the commencement of the bankruptcy.

(2) If this section applies—

(a) the bankrupt has the following rights as against the trustee—

(i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the Court;

(ii) if not in occupation, a right with the leave of the Court to enter into and occupy the dwelling house; and

(b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

(3) On an application under subsection (2), the Court shall make such order under as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

(4) If such an application is made after the end of the period of one year beginning with the first of the bankrupt's estate in a trustee, the Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Payments in respect of premises occupied by bankrupt

360. If any premises comprised in a bankrupt's estate are occupied by him, whether by virtue of the section 359 or otherwise, on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

Charge on bankrupt's home

361. (1) If any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this section the Court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable, up to the charged value from time to time, for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

(3) In subsection (2) the charged value means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order; plus

(b) interest on that amount from the date of the charging order at the judgment rate.

(4) In determining the value of an interest for the purposes of this section the Court shall disregard any matter which it is required to disregard by the Insolvency Rules.

Bankrupt's home ceasing to form part of estate

362. (1) This section applies if property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt;

(b) the bankrupt's spouse; or

(c) a former spouse of the bankrupt.

(2) At the end of the period of three years beginning with the commencement of the bankruptcy, the interest referred to in subsection (1) shall—

(a) cease to be comprised in the bankrupt's estate; and

(b) vest in the bankrupt, without conveyance, assignment or transfer.

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—

(a) the trustee realises the interest referred to in subsection (1);

(b) the trustee applies to the Court for an order for sale in respect of the dwelling-house;

(c) the trustee applies for an order for possession of the dwelling-house;

(d) the trustee applies for an order under section 360 in respect of that interest; or

(e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate, with or without the addition of interest from the date of the agreement, in consideration of which the interest referred to in subsection (1) shall cease to form part of the estate.

(4) If the trustee makes an application to Court for an order of sale in respect of the dwelling house during the period specified in subsection (2) which is dismissed, unless the Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

(a) cease to be comprised in the bankrupt's estate; and

(b) vest in the bankrupt, without conveyance, assignment or transfer.

(5) If the bankrupt does not inform the trustee of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—

(a) shall not begin with the date of the bankruptcy; but

(b) shall begin with the date on which the trustee becomes aware of the bankrupt's interest.

(6) The Court may substitute for the period of three years specified in subsection (2) a longer period—

(a) in such circumstances as may be prescribed; and

(b) in such other circumstances as the Court considers appropriate.

(7) The Insolvency Rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years specified in subsection (2) in specified circumstances, which may be described by reference to an action to be taken by the trustee.

(8) The Insolvency Rules may also make provision—

(a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply; or

(b) concerning the effect of a notice under paragraph *(a)*.

(9) The Insolvency Rules may, in particular—

(a) disapply this section;

(b) enable the Court to disapply this section;

(c) make provision in consequence of a disapplication of this section;

(d) enable the Court to make provision in consequence of a disapplication of this section; or

(e) make provision concerning compensation.

Saving for bankrupt's home

363. (1) This section applies if—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling-house which is occupied by the bankrupt or by his spouse or former spouse; and

(b) the trustee has been unable for any reason to realise that property.

(2) If this section applies, the trustee shall not summon a meeting under section 389 unless either—

(a) the Court has made an order under section 361 imposing a charge on that property for the benefit of the bankrupt's estate; or

(b) the court has declined, on an application under that section, to make such an order.

Bankruptcy trustee

General duties of trustee

364. (1) The principal duties of a trustee are—

(a) to take possession of, protect and realise the bankrupt's estate; and

(b) to distribute the bankrupt's estate in accordance with this Ordinance.

(2) If the trustee is not the Official Assignee, he has a duty—

(a) to provide the Official Assignee with such information;

(b) to produce to the Official Assignee, and permit inspection by the Official Assignee of, such documents; and

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

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

(3) A trustee shall, subject to this Ordinance and the Insolvency Rules, use his own discretion in undertaking his duties.

(4) If it appears to the trustee that the bankrupt is carrying on or has carried on unauthorised financial services business—

(a) he shall, as soon as reasonably practicable, report the matter to the Commission; and

(b) for the purposes of subsection (5), he shall treat the bankrupt as a licensee.

(5) If the bankrupt or at any time has been a licensee, the trustee shall—

(a) send to the Commission a copy of every notice or other document that he is required to file with the Court or to send to a creditor of the bankrupt; and

(b) unless the applicant is the Commission, give the Commission notice of any application made to the Court with respect to the bankruptcy, whether the application is made by him or by some other person.

(6) A trustee also has the other duties imposed by this Ordinance and the Insolvency Rules and such duties as may be imposed by the Court.

(7) In performing his functions and undertaking his duties under this Ordinance, a bankruptcy trustee acts as an officer of the Court.

Powers of trustee

365. (1) A trustee may—

(a) with the permission of the creditors' committee or Court, exercise any of the powers specified in Part 1 of Schedule 3; and

(b) without that permission, exercise any of the general powers specified in Part 2 of Schedule 3.

(2) With the permission of the creditors' committee or the Court, the trustee may appoint the bankrupt—

(a) to superintend the management of his estate or any part of it;

(b) to carry on his business, if any, for the benefit of his creditors; or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

(3) A permission given for the purposes of subsection (1)*(a)* or subsection (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Subject to subsection (5), if the trustee has done anything without the permission required by subsection (1)*(a)* or subsection (2), the Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(5) The creditors' committee shall not ratify the trustee's actions under subsection (4) unless it is satisfied that the trustee acted in a case of urgency and sought the committee's ratification without undue delay.

(6) Part 3 of Schedule 3 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under this Part.

(7) If the trustee, not being the Official Assignee, in exercise of the powers conferred on him by any provision in this Part—

(a) disposes of any asset comprised in the bankrupt's estate to an associate of the bankrupt; or

(b) employs an attorney,

he shall give notice to any creditors' committee of that exercise of his powers.

(8) Nothing in this Ordinance is to be construed as restricting the capacity of the trustee to exercise any of his powers outside the Islands.

(9) The acts of the trustee of a bankrupt are valid notwithstanding any defect in his nomination, appointment or qualifications.

Notice of appointment

366. (1) A trustee shall, within fourteen days of the date of his appointment—

(a) advertise his appointment in accordance with the Insolvency Rules;

(b) serve notice of his appointment on the bankrupt;

(c) if he has been appointed in respect of an individual who is a licensee, serve notice of his appointment on the Commission;

(d) send a notice of his appointment to every creditor of the bankrupt; and

(e) unless the Official Assignee is the trustee, file notice of his appointment with the Official Assignee.

(2) An advertisement under subsection (1)*(a)* and a notice under subsection (1)*(d)* shall set out the powers of the creditors under this Part to require him to call a meeting of creditors.

Appointment of trustee in place of Official Assignee

367. (1) When the Official Assignee is the trustee of a bankrupt's estate the Court may, on his application, appoint an eligible insolvency practitioner to act as trustee in his place.

(2) An application may be made under subsection (1) even though the Court has refused to make an appointment on a previous application by the Official Assignee.

Removal of trustee

368. (1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove a trustee from office if—

(a) the trustee—

(i) is not eligible to act as an insolvency practitioner in relation to the bankrupt;

(ii) breaches any duty or obligation imposed on him by or owed by him under this Ordinance or the Insolvency Rules or, in his capacity as trustee, under any other law; or

(iii) fails to comply with any direction or order of the Court made in relation to the bankruptcy; or

(b) the Court is satisfied that—

(i) the trustee's conduct of the bankruptcy is below the standard that may be expected of a reasonably competent trustee;

(ii) the trustee has an interest that conflicts with his role as trustee; or

(iii) that for some other reason he should be removed as trustee.

(2) An application to the Court to remove a trustee from office may be made by—

(a) the creditors' committee, if any;

(b) a creditor of the bankrupt; or

(c) the Official Assignee.

(3) If the Court removes a trustee from office under this section—

(a) if, following his removal, there is at least one trustee remaining in office, the Court may appoint an eligible insolvency practitioner as trustee in his place; or

(b) if the trustee removed was the sole trustee of the bankrupt, the Court shall appoint the Official Assignee or an eligible insolvency practitioner as trustee in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers appropriate.

Resignation of trustee

369. (1) A trustee—

(a) shall resign in accordance with the Insolvency Rules if he is no longer eligible to act as an insolvency practitioner in relation to the bankrupt; but

(b) otherwise may only resign in accordance with this section.

(2) A trustee may resign in accordance with subsection (3)—

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(3) Notwithstanding subsection (2), if joint trustees are appointed, one or more of the joint trustees may resign in accordance with subsection (4) if—

(a) all the joint trustees are of the opinion that it is no longer necessary or expedient for the resigning trustee or trustees to continue in office; and

(b) at least one of them will remain in office.

(4) If a trustee intends to resign on one of the grounds referred to in subsection (2) or (3), he shall call a meeting of creditors for the purpose of accepting his resignation as trustee.

(5) If, at the meeting called under subsection (4), the creditors resolve to accept the resignation of the trustee, he shall send a notice of his resignation to the creditors of the bankrupt and to the Official Assignee, who shall file a copy of the notice with the Court, and his resignation takes effect from the date that the notice is filed by the Official Assignee with the Court.

(6) If the creditors refuse or fail to accept the resignation of the trustee, he may apply to the Court for leave to resign in accordance with the Insolvency Rules.

(7) This section does not apply to the Official Assignee when acting as the trustee of a bankrupt.

Appointment of replacement trustee

370. (1) If a trustee dies or resigns under section 369, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one trustee remaining in place, may appoint an eligible insolvency practitioner as trustee in his place; or

(b) if the trustee who has died or resigned was the sole trustee of the bankrupt, shall appoint the Official Assignee or an eligible insolvency practitioner in his place.

(2) An application under subsection (1) may be made—

(a) by any continuing trustee;

(b) by the creditors' committee, if any; or

(c) by the Official Assignee.

(3) If there is a vacancy in the office of trustee, for whatever reason, the Official Assignee is trustee until the vacancy is filled.

Remuneration of trustee

371. (1) The remuneration payable to a trustee shall be fixed applying the principles specified in section 464.

(2) If the Court is satisfied that any improper solicitation has been used by or on behalf of a trustee in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the trustee out of the assets of the estate.

(3) An order of the Court under subsection (2) overrides any resolution of the creditors' committee or any other provision of this Ordinance or the Rules.

General control of trustee by the Court

372. (1) A person aggrieved by an act, omission or decision of a trustee may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the trustee.

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

Meetings of creditors

373. (1) A trustee may at any time call a meeting of the creditors of the bankrupt—

(a) by sending a notice of the meeting by post to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting.

(2) Notwithstanding subsection (1), the trustee shall call a meeting of creditors if—

(a) a meeting is requisitioned by the creditors of the bankrupt in accordance with subsection (3); or

(b) he is directed to do so by the Court.

(3) A creditors' meeting may be requisitioned in accordance with the Insolvency Rules by 25% in value of the creditors of the bankrupt.

(4) The trustee may, if he considers it appropriate, by written notice, require the bankrupt to attend a creditors' meeting called under this section.

(5) The bankrupt commits an offence if—

(a) he receives a notice to attend a creditors' meeting under subsection (4); and

(b) without reasonable excuse, he fails to attend the meeting.

(6) A bankrupt who commits an offence under subsection (5) is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $10,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $25,000 or to both.

Claims and distribution of estate

Distribution of bankrupt's estate

374. (1) The bankrupt's estate shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the bankruptcy in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the bankruptcy, in paying admitted preferential claims in accordance with the provisions for the payment of preferential claims;

(c) after payment of the preferential claims, in paying all other admitted claims; and

(d) after paying all admitted claims, in paying any interest payable under section 382.

(2) Subject to section 153, the claims referred to in subsection (1)*(c)* rank equally and, if the bankrupt's estate is insufficient to meet them all in full, they shall be paid rateably.

Debts to spouse

375. (1) Any claims in respect of credit provided by a person who was the bankrupt's spouse at the time of the bankruptcy order, whether or not he was the bankrupt's spouse at the time the credit was provided—

(a) rank in priority after the debts and interest specified in section 374(1); and

(b) are payable with interest at the rate specified in section 374(1)*(d)* in respect of the period during which they have been outstanding since the date of the bankruptcy order.

(2) The interest payable under paragraph *(b)* has the same priority as the debts on which it is payable.

Claims by unsecured creditors

376. (1) An unsecured creditor may make a claim in the bankruptcy of an individual by submitting to the trustee a written claim, signed by him or on his behalf.

(2) The trustee may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (7), as soon as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the trustee may have imposed under subsection (2), the trustee shall either admit or reject the claim in whole or in part.

(4) If the trustee rejects the claim, whether in whole or in part, he shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the trustee under subsection (2).

(6) The trustee shall not admit a claim in the bankruptcy unless it has been made in accordance with this section.

(7) The trustee is not required to admit or reject claims under subsection (3) at any time when it appears to him that there are insufficient assets in the bankrupt's estate to enable a distribution to be made to unsecured creditors.

(8) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim,

commits an offence.

(9) A person who commits an offence under subsection (8) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Variation, withdrawal and expunging of claims

377. (1) A claim made under section 376 may—

(a) be amended or withdrawn by the creditor at any time before the trustee has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the trustee at any time after the trustee has admitted it.

(2) The Court, on the application of the trustee or, if the trustee declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

Claims by secured creditors

378. (1) A secured creditor may—

(a) value the assets subject to the security interest and claim in the bankruptcy as an unsecured creditor for the balance of his debt; or

(b) surrender his security interest to the trustee for the general benefit of creditors and claim in the bankruptcy as an unsecured creditor for the whole of his debt,

but he is not obliged to do either.

(2) A secured creditor may, at any time apply to the trustee to amend the value that he placed on the security interest in his claim.

(3) If, on receiving an application under subsection (2), the trustee is satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed,

he may permit the secured creditor to amend the value that he places on the security interest.

(4) If the trustee is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)*(a)* or on an amendment under subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the trustee or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the trustee are entitled to bid for and purchase them.

Redemption of security interest by trustee

379. (1) If a secured creditor has claimed in a bankruptcy under section 378(1)*(a)*, the trustee may at any time give notice to the creditor that he proposes at the expiration of twenty-eight days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within twenty-one days of the date of the notice, apply to the trustee to revise the value that he places on the security interest in accordance with section 378(2).

(3) At the expiration of twenty-eight days from the date of the notice under subsection (1), the trustee may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the trustee to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the trustee to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) If, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the trustee or on appeal to the Court, the trustee may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the trustee, require him to elect whether or not to exercise his power to redeem under this section.

(6) If a notice to elect is served on a trustee under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

Realisation of security interest by secured creditor

380. (1) If a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the trustee for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) If a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the debt secured—

(a) if the creditor has previously valued his security interest and claimed in the bankruptcy for the balance under section 378(1)*(a)*, the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the bankruptcy as an unsecured creditor for the balance of his debt.

(3) For the purposes of this section, the secured debt includes contractual interest payable to the secured creditor on the debt up to the time of its satisfaction.

Surrender for non-disclosure

381. (1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in a bankruptcy, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct—

(a) that he is not required to surrender his security interest; and

(b) that he value his security interest and amend his claim accordingly.

Interest after commencement of bankruptcy

382. (1) Interest is payable on any claim in a bankruptcy in respect of the period after the commencement of the bankruptcy in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the bankruptcy shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the bankruptcy.

(3) Subject to section 153, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally.

(4) The rate of interest payable under this section is the greater of—

(a) the judgment rate; and

(b) the rate that would be applicable to the claim if a bankruptcy order had not been made.

Distribution by means of dividend

383. (1) Whenever the trustee has sufficient funds in hand for the purpose, he shall, subject to the retention of such sums as may be necessary for his remuneration and the other costs and expenses of the bankruptcy, distribute dividends among the creditors with admitted claims.

(2) Before distributing a dividend under subsection (1), the trustee shall send each creditor a notice—

(a) stating that he intends to distribute a dividend; and

(b) fixing a date on or before which creditors shall submit their claims to him.

(3) In determining the funds available for distribution to creditors by way of a dividend, the trustee shall make provision—

(a) for any admissible debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to submit their claims;

(b) for any admissible debts which are the subject of claims which have not yet been determined; and

(c) for disputed claims.

Claims by unsatisfied creditors

384. (1) A creditor who has not submitted his claim by the date fixed in the notice issued under section 383(2) is not entitled to disturb the distribution of that dividend, by reason that he has not participated in it, but—

(a) when that claim has been admitted, he 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 he has failed to receive; and

(b) any dividend or dividends payable under paragraph *(a)* shall be paid before that money is applied to the payment of any such further dividend.

(2) Subject to section 386, if the trustee makes more than one distribution, section 383 and subsection (1) of this section apply to each distribution.

Distribution of assets in specie

385. (1) Without prejudice to the provisions in this Ordinance concerning disclaimer, the trustee may, with the permission of the creditors' committee or the Court, divide in their existing form amongst the bankrupt’s creditors, according to their estimated value, any assets which from their peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and

a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.

(3) Subject to subsection (4), if the trustee has done anything without the permission required by subsection (1), the Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee may only ratify the trustee's actions under subsection (3) if it is satisfied that the trustee acted in a case of urgency and that he has sought its ratification without undue delay.

Final distribution

386. (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the bankruptcy, he shall give notice in the prescribed manner either—

(a) of his intention to distribute a final dividend; or

(b) that no dividend, or further dividend, will be distributed.

(2) A notice given under subsection (1) shall require claims against the bankrupt's estate to be established by a date specified in the notice (referred to in this section as "the final date").

(3) The Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(b) if he intends to distribute a final dividend, distribute that dividend without regard to the claim of any person in respect of a claim not already admitted in the bankruptcy.

No action for dividend

387. No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the Court may, if it considers it appropriate, order him to pay it and also to pay out of his own money—

(a) interest on the dividend at the judgment rate from the time it was withheld; and

(b) the costs of the application.

Right of bankrupt to surplus

388. (1) Subject to subsection (2), the bankrupt is entitled to any surplus remaining after payment in full of the costs, expenses and claims referred to in section 374(1).

(2) The Court may make an order directing the trustee not to distribute the surplus or any part of it to the bankrupt if, on the application of the Attorney General, it is satisfied that—

(a) proceedings under any law dealing with the confiscation of the proceeds of crime are pending, whether in the Islands or elsewhere; and

(b) the assets of the bankrupt may become subject to a confiscation order or to be required to meet some other order made in those proceedings.

(3) The Court may, on the application of the Attorney General or the bankrupt vary or revoke an order made under subsection (2).

Final Meeting

389. (1) If it appears to the trustee that the administration of the bankrupt's estate in accordance with this Ordinance is for practical purposes complete and the trustee is not the Official Assignee, he shall call a final general meeting of the bankrupt's creditors to receive the trustee's report of his administration of the bankrupt's estate.

(2) The trustee may, if he thinks appropriate, call the final general meeting at the same time as giving notice under section 386 but, if called for an earlier date, the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(3) As soon as reasonably practicable after the final meeting has been held, the trustee shall send to the Official Assignee and file with the Court a notice that the meeting has been held and shall file a copy of his final report with the Court.

(4) The trustee shall vacate office on filing a notice to the Court under subsection (3).

(5) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

Prior transactions

Contracts to which bankrupt is a party

390. (1) If a contract has been made with a person who subsequently becomes bankrupt, 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.

(2) Any damages payable by the bankrupt by virtue of an order of the Court under this section are provable as a bankruptcy debt.

(3) If an undischarged bankrupt 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 bankrupt.

Enforcement procedures

391. (1) Subject to section 347 and to this section, if the creditor of a bankrupt has, before the commencement of that bankruptcy—

(a) issued execution against the goods or land of the bankrupt; or

(b) attached a debt due to the bankrupt from another person,

the creditor is not entitled, as against the bankruptcy trustee, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

(2) If any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the officer charged with the execution that a bankruptcy order has been made against that person—

(a) that officer shall on request deliver the goods and any money seized or recovered in part satisfaction of the execution to the trustee; but

(b) the costs of the execution are a first charge on the goods or money so delivered and the trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6), if—

(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale;

(b) before the end of the period of fourteen days beginning with the day of the sale or payment the officer charged with the execution is given notice that a bankruptcy application has been filed in relation to that person; and

(c) a bankruptcy order is or has been made on that application,

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the officer charged with the execution shall—

(a) not dispose of the balance mentioned in subsection (3) at any time within the period of fourteen days so mentioned or while there is pending an application for a bankruptcy order of which he has been given notice under that subsection; and

(b) pay that balance, if by virtue of that subsection it is comprised in the bankrupt's estate, to the trustee.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale;

(b) an execution against land is completed by seizure or by the appointment of a receiver;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the trustee may, to such extent and on such terms as it considers appropriate, be set aside by the Court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee to claim goods from a person who has acquired them in good faith under a sale by an officer charged with an execution.

(8) Neither subsection (2) nor (3) applies in relation to any execution against assets which have been acquired by or have devolved upon the bankrupt since the commencement of the bankruptcy unless, at the time the execution is issued or before it is completed—

(a) the assets have been or are claimed for the bankrupt's estate under section 354 (after-acquired assets); and

(b) a copy of the notice given under that section has been or is served on the officer charged with the execution.

Distress

392. (1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available, subject to subsection (5), against goods and effects comprised in the bankrupt's estate, but only for six months' rent accrued due before the commencement of the bankruptcy.

(2) If 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,

shall be held for the bankrupt as part of his estate.

(3) If any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual against whom a bankruptcy order is made before the end of the period of three months beginning with the distraint, so much of those goods or effects, or the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall 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) If by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of 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 of payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Nothing in this Part affects any right to distrain otherwise than for rent, and any such right is at any time exercisable without restriction against assets comprised in a

bankrupt's estate, even if that right is expressed by any law to be exercisable in like manner as a right to distrain for rent.

(7) Any right to distrain against assets comprised in a bankrupt's estate is exercisable even though the assets have vested in the trustee.

(8) This section is without prejudice to a landlord's right in a bankruptcy to claim for any bankruptcy debt in respect of rent.

Unenforceability of liens on books, papers and records

393. (1) A lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that such enforcement would deny possession of any books, papers or other records to the Official Assignee or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to assets and are held as such.

General powers of Court

General control of Court

394. (1) Every bankruptcy is under the general control of the Court and, subject to anything to the contrary in this Ordinance, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without limiting this Part, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered shall do all such things as he may be directed to do by the Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The Official Assignee or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

(4) A person who without reasonable excuse fails to comply with any obligation imposed on him by subsection (2) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Power of arrest

395. (1) In the cases specified in subsection (2) the Court may cause a warrant to be issued to a police officer—

(a) for the arrest of a debtor to whom an application for a bankruptcy order relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered; and

(b) for the seizure of any documents, money or goods in possession of a person arrested under the warrant,

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, in accordance with the Insolvency Rules, until such time as the Court may order.

(2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the filing of the application for a bankruptcy order or the making of the bankruptcy order against him, it appears to the Court—

(a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to an application for a bankruptcy order or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs;

(b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the trustee;

(c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his assets or any documents which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate;

(d) that he has, without the leave of his trustee, removed any assets in his possession which exceed in value such sum as may be prescribed for the purpose of this paragraph; or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

Seizure of bankrupt's assets

396. (1) At any time after a bankruptcy order has been made, the Court may, on the application of the Official Assignee or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any assets comprised in the bankrupt's estate, or any documents or records relating to the bankrupt's estate or affairs, which are in the possession or under the control of the bankrupt or any other person who is required to deliver the assets, books, papers or records to the Official Assignee or trustee.

(2) Any person executing a warrant under this section may, for the purpose of seizing any assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs, break open any premises if the bankrupt or anything that may be seized under the warrant 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 assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs are concealed in any premises not belonging to him, it may issue a warrant authorising any police officer or prescribed officer of the Court to search those premises for the assets or documents.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Re-direction of bankrupt's mail

397. (1) If a bankruptcy order has been made, the Court may from time to time, on the application of the trustee of the bankrupt's estate, order the Post Office to re-direct and send or deliver to the trustee or otherwise any mail which would otherwise be sent or delivered to the bankrupt at such place or places as may be specified by the order.

(2) An order under this section has effect for such period, of three months, as may be specified in the order.

Disclaimer

Trustee may disclaim onerous property

398. (1) For the purposes of this section, "onerous property" means—

(a) an unprofitable contract; or

(b) an asset comprised in the bankrupt's estate which is unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to sections 400 and 401(2), a trustee may, by filing a notice of disclaimer with the Court, disclaim any onerous property comprised in the bankrupt's estate even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A trustee who disclaims onerous property shall, within fourteen days of the date on which the disclaimer notice is filed, give notice to every person whose rights are, to his knowledge, affected by the disclaimer.

(4) A trustee who contravenes subsection (3) commits an offence and is liable—

(a) on summary conviction, to a fine of $10,000;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $25,000 or to both.

When disclaimer takes effect

399. (1) Subject to subsections (2) and (4), a disclaimer takes effect on the date when the notice of disclaimer is filed at Court.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every person claiming under the bankrupt as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 402 with respect to that property before the end of a period of fourteen days beginning with the day on which the last notice under this subsection was given; or

(b) if such an application is made, the Court directs that the disclaimer is to take effect.

(3) If the Court gives a direction under subsection (2)*(b)*, it may also, instead of or in addition to any order it makes under section 402, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

(4) Without prejudice to subsections (1) to (3), the disclaimer of any property in a dwelling-house does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every person in occupation of or claiming a right to occupy the dwelling-house and either—

(a) no application under section 402 is made with respect to the property before the end of a period of fourteen days beginning with the day on which the last notice under this subsection was given; or

(b) if such an application is made, the Court directs that the disclaimer is to take effect.

Notice to trustee to elect whether to disclaim

400. (1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the trustee, require him to elect whether or not to disclaim the property.

(2) If a notice to elect is served on a trustee, he is not entitled to disclaim the property under section 398 unless he does so within twenty-eight days of the date of service of the notice on him or within such extended period as the Court may allow.

(3) The trustee is deemed to have adopted any contract which, by virtue of this section, he is not entitled to disclaim.

Effect of disclaimer

401. (1) Subject to subsection (2), a disclaimer of onerous property under section 398—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed; and

(b) discharges the trustee from all personal liability in respect of that property as from the date of his appointment,

but, except so far as is necessary to release the bankrupt, the bankrupt's estate and the trustee from liability, does not affect the rights or liabilities of any other person.

(2) A notice of disclaimer shall not be given under section 398 in respect of any property that has been claimed for the estate under section 354 (after-acquired assets) or 355 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the court.

(3) A person sustaining loss or damage as a result of a disclaimer of onerous property under section 398 may claim in the bankruptcy of the bankrupt as a creditor for the amount of the loss or damage.

Vesting orders and orders for delivery

402. (1) Subject to section 403, if a trustee disclaims onerous property under section 398, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; or

(c) if 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.

(2) On an application under subsection (1), the Court may, on such terms as it considers appropriate, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer;

(c) a trustee for a person referred to in paragraph *(a)* or *(b)*; or

(d) if 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 shall not make an order in respect of a person specified in subsection (2)*(b)*, or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage sustained by a person for the purposes of section 401(3).

(5) Subject to subsection (6), if a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) If another law—

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that law enables the order to be registered,

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the law have been complied with.

Vesting orders in respect of leases

403. (1) If the Court makes an order under section 402 vesting property of a leasehold nature in a person, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the bankrupt was subject to under the lease on the date that the bankruptcy order was made; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him on that date.

(2) If the property vested by an order under section 402 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) If no person is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in 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; and

(b) if a vesting order is made under paragraph *(a)*, may vest the property free from all estates, encumbrances and interests created by the bankrupt.

(4) If a person declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

Disclaimer presumed valid

404. Unless it is proved that a trustee has breached his duty to give notice under section 398(3) or that he has otherwise breached his duties under this Ordinance or the Insolvency Rules with regard to disclaimer, a disclaimer of property by the trustee is presumed to be valid and effective.

Investigation of bankrupt's affairs

Statement of assets and liabilities

405. (1) If a bankruptcy order has been made against an individual otherwise than on his own application, the bankrupt shall submit a verified statement of his assets and liabilities to his trustee within twenty-one days of the date of the bankruptcy order.

(2) A statement of assets and liabilities shall contain—

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(b) such other information as may be prescribed.

(3) The trustee or the Court may, in accordance with the Insolvency Rules—

(a) release the bankrupt from his duty under subsection (1); or

(b) extend the period of time specified in that subsection.

(4) If the trustee considers that it would prejudice the conduct of the bankruptcy for the whole or part of a statement of assets and liabilities submitted to him to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.

(5) The Court may, on an application under subsection (4), order that the statement of assets and liabilities or, as the case may be, the specified part of it, is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with the leave of the Court.

(6) A bankrupt who—

(a) fails to submit a statement of his assets and liabilities in accordance with subsection (1); or

(b) submits a statement of his assets and liabilities that does not comply with the prescribed requirements,

commits an offence.

(7) A bankrupt who commits an offence under subsection (6) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Preliminary report

406. (1) The trustee of a bankrupt shall, within sixty days of the date of the bankruptcy order, prepare a preliminary report stating whether, in his opinion, further enquiry is desirable with respect to—

(a) whether the bankrupt has committed a bankruptcy offence;

(b) whether there are any claims under Part XIII;

(c) any matter relating to the conduct by the bankrupt of his business or affairs.

(2) The trustee shall send a copy of the report prepared under subsection (1) to the Official Assignee.

(3) Subsection (2) does not apply to the Official Assignee when he is acting as trustee.

(4) The Court may, on the application of the trustee, extend the period specified in subsection (1) on such terms and conditions as it considers appropriate.

(5) If the Official Assignee receives a report under this section, he shall carry out such investigation, if any, as he considers appropriate.

Application for examination of bankrupt and others

407. (1) If a bankruptcy order is made, an application may be made to the Court, *ex parte*, by the trustee or by the Official Assignee at any time before the discharge of the bankrupt for an order that a person specified in subsection (2) appear before the Court to be examined concerning the affairs, dealings and assets of the bankrupt.

(2) An application under subsection (1) may be made in respect of one or more of the following—

(a) the bankrupt;

(b) the bankrupt's spouse or former spouse;

(c) any person known or believed to be indebted to the bankrupt or to have in his possession any asset comprised in the bankrupt's estate;

(d) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs, assets or liabilities.

(3) The examination of a bankrupt may be held in public or in private but the examination of any other person shall be held in private.

(4) Unless the Court otherwise orders, the trustee shall make an application under subsection (1) in respect of the bankrupt if notice requiring him to do so is given to him, in accordance with the Insolvency Rules, by not less than 50%, in value, of the creditors of the bankrupt.

Order for examination

408. (1) In this section, "examinee" means the person to be examined before the Court.

(2) On hearing an application made under section 407, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (2)—

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) if the examinee is the bankrupt, shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the bankrupt or his dealings, affairs, liabilities or assets;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

(f) if the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) If the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, if the trustee is not the Official Assignee—

(a) if the applicant is the trustee, send a sealed copy of the order to the Official Assignee; or

(b) if the applicant is the Official Assignee, send a sealed copy of the order to the trustee.

(5) If an order under subsection (2) is for the public examination of the bankrupt, the applicant shall give not less than fourteen days' notice of the examination to each creditor of the bankrupt.

(6) The Court may, as part of an order made under this section, or at any subsequent time, make one or more of the following directions—

(a) a direction specifying the matters upon which the examinee may be examined;

(b) a direction specifying the procedures to be followed at the examination; and

(c) in the case of the bankrupt's spouse or former spouse, a direction that the examinee—

(i) file with the Court an affidavit containing such matters as are specified by the Court; or

(ii) produce at his examination any documents in his possession or under his control relating to the bankrupt's dealings, affairs, assets or liabilities.

Conduct of examination

409. (1) This section applies to an examination held pursuant to an order made under section 408.

(2) An examinee shall be examined on oath, either orally or by interrogatories, and he shall answer such questions as the Court may put, or allow to be put to him.

(3) Subject to subsections (4) and (5), an examination is conducted by the applicant, or by his attorney, and the person examined is entitled to be represented by an attorney who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

(4) The examinee may also be examined—

(a) if the applicant is the Official Assignee, by the trustee; or

(b) if the applicant is the trustee, by the Official Assignee.

(5) At a public examination of the bankrupt, questions may, with the leave of the Court, be put to the examinee by any creditor present at the examination or by the attorney representing such a creditor.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 410, the written record of an examination is admissible in evidence in any proceedings under this Ordinance.

Examinee shall answer questions put to him

410. (1) An examinee is not excused from answering a question put to him at an examination held pursuant to an order made under section 408 on the ground that the answer may incriminate him or tend to incriminate him.

(2) Notwithstanding subsection (1), the record of an examination held pursuant to an order made under section 408 is not admissible as evidence in any criminal proceedings against the examinee except if he is charged with the offence of perjury.

Examinee failing to appear for his examination

411. (1) If a person without reasonable excuse fails to attend an examination ordered to be held under section 408, or there are reasonable grounds for believing that the examinee

has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may issue a warrant 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.

(2) The Court may authorise a person arrested under a warrant issued under subsection (1) to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Insolvency Rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

(3) A person who fails to attend an examination ordered to be held under section 408 commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of six months or to a fine of $10,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of one year or to a fine of $25,000 or to both.

Court's enforcement powers

412. (1) If it appears to the Court, on consideration of any evidence obtained under section 409, 411 or this section, that any person has in his possession any assets comprised in the bankrupt's estate, the Court may, on the application of the trustee, order that person to deliver the assets or any of them to the trustee at such time, in such manner and on such terms as the Court considers appropriate.

(2) If it appears to the Court, on consideration of any evidence obtained under section 409, 411 or this section, that any person is indebted to the bankrupt, the Court may, on the application of the trustee, order that person to pay the trustee, at such 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 considers appropriate.

(3) The Court may order that any person who, if within the jurisdiction of the Court, would be liable to be examined pursuant to an order made under section 408, shall be examined in the Islands or any place outside the Islands.

Discharge and annulment of bankruptcy

Bankrupt ineligible for automatic discharge

413. (1) A bankrupt is ineligible for automatic discharge under section 414, if—

(a) he has been an undischarged bankrupt at any time in the ten years prior to the date of the bankruptcy order; or

(b) he has been convicted of a bankruptcy offence.

(2) If a previous bankruptcy order made against a person has been annulled under section 420, the period during which that person was an undischarged bankrupt by virtue of that bankruptcy order shall be ignored for the purposes of subsection (1)*(a)*.

Automatic discharge

414. (1) Subject to subsection (2), a bankrupt is discharged from bankruptcy at the end of the period of three years commencing on the date of the bankruptcy order unless—

(a) he is ineligible for automatic discharge by virtue of section 413; or

(b) he has previously been discharged under section 417(1)*(b)* or *(c)*.

(2) On the application of a person specified in subsection (3), the Court may, on the grounds specified in subsection (4)—

(a) extend the period referred to in subsection (1);

(b) order that the period will cease to run until the fulfilment of such conditions as it may specify; or

(c) order that the bankrupt is not entitled to automatic discharge.

(3) An application under subsection (2) may be made on the application of the Official Assignee or the trustee of the bankrupt.

(4) The Court may—

(a) make an order under subsection (2)*(a)* or *(b)* if it is satisfied that the bankrupt has failed or is failing to comply with any of his obligations under this Ordinance or the Insolvency Rules; or

(b) make an order under subsection (2)*(c)* on any of the grounds upon which it could refuse to discharge the bankrupt under section 417.

(5) An application under subsection (2)—

(a) shall be made before the bankrupt has been discharged under subsection (1); and

(b) when made, operates to suspend the period referred to in subsection (1) until after the determination of the application by the Court.

(6) The Court may not, by an order made under section 475(1), permit an application to be made under subsection (2) after the discharge of a bankrupt under subsection (1).

Application by bankrupt concerning order for suspension of discharge

415 (1) If the Court has made an order under section 414(2)*(b)* that the period for automatic discharge will cease to run, the bankrupt may apply to the Court for the order to be varied or discharged.

(2) On an application made under subsection (1), the Court may vary or discharge its order.

Application for discharge by Court order

416. (1) A bankrupt may apply to the Court for his discharge—

(a) if he is ineligible for automatic discharge or if the Court has made an order under section 414(2)*(c)* that he is not entitled to automatic discharge, at any time after three years from the date of the bankruptcy order; or

(b) in any other case, at any time after six months from the date of the bankruptcy order.

(2) An application under subsection (1) shall be served on—

(a) the Official Assignee; and

(b) his trustee, if not the Official Assignee,

not less than forty-two days before the date fixed for the hearing.

Court order on application for discharge

417. (1) Subject to subsection (3), on an application under section 416, the Court may—

(a) refuse the application;

(b) make an order discharging the bankrupt absolutely; or

(c) make an order discharging the bankrupt subject to such conditions as it considers appropriate, including conditions with respect to—

(i) any income which may subsequently become due to him; or

(ii) any assets that may devolve on him or be acquired by him after his discharge.

(2) An order under subsection (1)*(c)* may be made with immediate effect or may be made effective after such period or until the fulfilment of such conditions as may be specified in the order.

(3) If an application is made under section 416 more than eight years after the date of the bankruptcy order, the Court shall not refuse the application unless it is satisfied that there are exceptional reasons for not granting the bankrupt his discharge.

(4) Subject to subsection (3), the Court may refuse to grant a bankrupt his discharge if—

(a) the bankrupt has failed or is failing to comply with his obligations under this Ordinance or the Insolvency Rules;

(b) the bankrupt has, after the date of the bankruptcy order, engaged in a prohibited activity;

(c) the bankrupt has been convicted of a bankruptcy offence;

(d) the bankrupt has failed, whether intentionally or not, to disclose to his trustee particulars of—

(i) any of his assets;

(ii) any liability existing at the date of the bankruptcy order; or

(iii) any income or expected income;

(e) the bankrupt has been engaged in any business for any of the period of three years prior to the date of the bankruptcy order, he has—

(i) failed to keep such books and accounts as would sufficiently disclose his business transactions and financial position whilst engaged in his business; or

(ii) having kept the books and accounts referred to in subparagraph (i), he has failed to preserve them;

(f) the bankrupt continued to trade after knowing, or having reason to believe himself to be unable to pay his debts as they fell due;

(g) the bankrupt contracted any liability that is claimable in his bankruptcy without having at the time of contracting it any reasonable expectation that he would be able to discharge it;

(h) the bankrupt, either before or after the bankruptcy order, has committed any fraud or breach of trust;

(i) the bankrupt has entered into a voidable transaction within the meaning of section 425; or

(j) for any other reason it considers it appropriate to do so.

Effect of discharge

418. (1) Subject to this section, if a bankrupt is discharged, the discharge releases him from all debts claimable in the bankruptcy, but has no effect—

(a) on the functions, so far as they remain to be carried out, of the trustee; or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Ordinance.

(2) The discharge of a bankrupt does not affect the right—

(a) of any creditor of the bankrupt to claim in the bankruptcy for any debt from which the bankrupt is released; or

(b) of any secured creditor of the bankrupt to enforce his security interest for the payment of a debt from which the bankrupt is released.

(3) The discharge of a bankrupt does not release the bankrupt from—

(a) a liability incurred by means of a fraud or fraudulent breach of trust to which the bankrupt was a party or a liability of which he has obtained forbearance by fraud;

(b) a claim that is prescribed as being a non-admissible claim;

(c) an admissible claim that is prescribed as a claim that is not released on discharge;

(d) a liability under a recognizance; or

(e) a liability in respect of a fine imposed for an offence.

(4) Except to such extent and subject to such conditions as the Court may otherwise order, the discharge of a bankrupt does not release the bankrupt from—

(a) a liability under a maintenance agreement or maintenance order or arrears payable under such an agreement or order;

(b) 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; or

(c) such other liabilities, not being liabilities that may be claimed in the bankruptcy, as may be prescribed.

(5) The discharge of a bankrupt 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.

(6) In subsection (4), "personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

Discharged bankrupt to give assistance

419. (1) A discharged bankrupt shall, even though discharged, give such assistance as his trustee reasonably requires in the realisation and distribution of such of his assets as are vested in his trustee.

(2) A discharged bankrupt who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Annulment of bankruptcy order

420. (1) The Court may annul a bankruptcy order, whether or not the bankrupt has been discharged, if at any time it appears to the Court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made; or

(b) that, to the extent required by this Ordinance and the Insolvency Rules, the claims made in the bankruptcy and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) If the court annuls a bankruptcy order—

(a) any sale or other disposition of assets, payment made or other thing done, under any provision in this Part, by or under the authority of the trustee or by the Court is valid; but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms, if any, as the Court may direct.

(3) The Court may, when making an annulment order, include such supplemental provisions as may be authorised by the Insolvency Rules.

(4) The trustee shall vacate office if the bankruptcy order is annulled.

Release of trustee

421. (1) If the Official Assignee ceases to be the trustee of a bankrupt's estate and another person is appointed trustee in his place, the Official Assignee obtains his release—

(a) from the appointment of the new trustee; or

(b) from such later date as the Court may determine.

(2) If the Official Assignee, while he is the trustee, gives notice to the Court that the administration of the bankrupt's estate in accordance with this Part is for practical purposes complete, he obtains his release with effect from such time as the Court may determine.

(3) A person other than the Official Assignee who ceases to be trustee may apply to the Court for his release and the Court may grant the release unconditionally or subject to such conditions as it considers appropriate, or withhold it.

(4) If the Court withholds the release it may make an order against the former trustee under section 422.

(5) If a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the Court may determine.

(6) Subject to subsection (7), if a former trustee is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the estate and otherwise in relation to his conduct as trustee.

(7) Subsection (6) does not prevent the Court from making an order under section 422 against a trustee who has been released under this section.

(8) A trustee, other than the Official Assignee, who obtains his release under this section shall file a notice in the approved form with the Official Assignee.

Liability of trustee

422. (1) If on an application under this section the Court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other assets comprised in the bankrupt's estate; or

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

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other assets, together with interest at such rate as the Court considers just, or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court considers just.

(2) Subject to subsection (3), an application under this section may be made by the Official Assignee, a creditor of the bankrupt or, whether or not there is, or is likely to be, a surplus for the purposes of section 388, the bankrupt himself.

(3) The leave of the Court is required for the making of an application under this section if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 421.

(4) If—

(a) the trustee seizes or disposes of any asset which is not comprised in the bankrupt's estate; and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled, whether pursuant to an order of the court or otherwise, to seize or dispose of that asset,

the trustee 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 in so far as that loss or damage is caused by negligence of the trustee and the trustee has a lien on the asset, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) Subsection (1) does not prevent any person from instituting any other proceedings in relation to matters in respect of which an application can be made under that subsection.

Second or subsequent bankruptcy

Stay of distribution in case of second bankruptcy

423. (1) This section and section 424 apply if a bankruptcy order is made against an undischarged bankrupt and in both sections—

"earlier bankruptcy" means the bankruptcy, or the most recent bankruptcy, from which the bankrupt has not been discharged at the time when the later bankruptcy commences;

"existing trustee" means the trustee, if any, of the bankrupt's estate for the purposes of the earlier bankruptcy; and

"later bankruptcy" means the bankruptcy arising from the bankruptcy order made against an undischarged bankrupt.

(2) If the existing trustee has been given notice of the application for the later bankruptcy, any distribution or other disposition by him of any asset to which subsection (3) applies made after the giving of the notice is void except to the extent that it was made with the consent of the Court or is or was subsequently ratified by the Court.

(3) Subsection (2) applies to—

(a) any asset which is vested in the existing trustee under section 354;

(b) any money paid to the existing trustee pursuant to an income payments order under section 355; and

(c) any asset or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of an asset or money falling within paragraphs *(a)* or *(b)*.

Adjustment between earlier and later bankruptcy estates

424. (1) With effect from the commencement of the later bankruptcy any asset to which section 423(3) applies which, immediately before the commencement of that bankruptcy,

is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy.

(2) Any sum which in pursuance of an income payments order made under section 355 is payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy and the Court may give such consequential directions for the modification of the order as it considers appropriate.

(3) Anything comprised in a bankrupt's estate by virtue of subsections (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for his remuneration or any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided in this section and in section 423, any asset which is, or by virtue of section 348 is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, is not comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier bankruptcy, are not to be creditors of his in the later bankruptcy in respect of the same liabilities but the existing trustee may claim in the later bankruptcy for—

(a) the unsatisfied balance of the liabilities, including any liability under this subsection, claimable against the bankrupt's estate in the earlier bankruptcy;

(b) any interest payable on that balance; and

(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount claimable under subsection (5) ranks in priority after all the other claims admitted in the later bankruptcy and after interest on those claims and, accordingly, shall not be paid unless those claims and that interest have first been paid in full.

PART XIII

VOIDABLE TRANSACTIONS, MALPRACTICE AND OFFENCES

Interpretation for this Part

425. (1) In this Part—

"debtor" means the individual against whom a bankruptcy order is made;

"insolvent bankruptcy" means a bankruptcy if the assets comprised in the bankrupt's estate are insufficient to pay his liabilities and the expenses of the bankruptcy;

"insolvency transaction" has the meaning specified in subsection (2);

"onset of insolvency" means the date on which the application for a bankruptcy order was filed;

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a voidable general assignment of book debts; or

(d) an extortionate credit transaction;

"vulnerability period" means—

(a) for the purposes of sections 426, 427 and 428—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing two years prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(b) for the purposes of section 429, the period commencing five years prior to the onset of insolvency and ending on the date of the bankruptcy order.

(2) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the debtor is insolvent; or

(b) it causes the debtor to become insolvent.

(3) For the purposes of subsection (2), an individual is insolvent if he is unable to pay his debts as they fall due for payment.

(4) This Part applies in respect of an individual only if a bankruptcy order is made against him.

Unfair preferences

426. (1) Subject to subsection (2), a transaction entered into by an individual is an unfair preference given by the individual to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the individual becoming a bankrupt, will be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference even though it is entered into pursuant to the order of a court or tribunal in or outside the Islands.

(4) If a transaction entered into by an individual within the vulnerability period has the effect specified in subsection (1)*(c)* in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

Undervalue transactions

427. (1) Subject to subsection (2), an individual enters into an undervalue transaction with a person—

(a) if he—

(i) makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for him to receive no consideration; or

(ii) 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 him; and

(b) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) An individual does not enter into an undervalue transaction with a person if—

(a) the individual enters into the transaction in good faith and for the purposes of his business; and

(b) at the time when he enters into the transaction, there were reasonable grounds for believing that the transaction would benefit him.

(3) A transaction may be an undervalue transaction even though it is entered into pursuant to the order of a court or tribunal in or outside the Islands.

(4) If an individual enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)*(a),* unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

Voidable general assignment of book debts

428. (1) This section applies if an individual engaged in any business makes a general assignment to another of his existing or future book debts, or any class of them, and a bankruptcy order is subsequently made against him.

(2) The assignment is voidable as regards book debts which were not paid before the filing of the application for the bankruptcy order.

(3) For the purposes of subsections (1) and (2)—

"assignment" includes an assignment by way of security or charge on book debts; and

"general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts; or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

Extortionate credit transactions

429. A transaction entered into by an individual within the vulnerability period for, or involving the provision of, credit to him is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction 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 credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

Orders in respect of voidable transactions

430. (1) Subject to section 431, if it is satisfied that a transaction entered into by an individual is a voidable transaction the Court, on the application of the bankruptcy trustee of the individual—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers appropriate for restoring the position to what it would have been if the bankrupt had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the trustee of any sums paid by the bankrupt to that person by virtue of the transaction;

(iii) the surrender by any person to the trustee of any asset held by him as security for the purposes of the transaction;

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)*(b)*, an order under that paragraph may—

(a) require any asset transferred as part of the transaction to be vested in the trustee;

(b) require any asset to be vested in the trustee if it represents in any person's hands the application either of the proceeds of sale of an asset transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the bankrupt or the liability of the bankrupt under any contract;

(d) require any person to pay, in respect of benefits received by him from the bankrupt, such sums to the trustee 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 to that person as the Court considers 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 asset and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to claim in the bankruptcy of the bankrupt in such amount as the Court considers appropriate; and

(h) require the bankrupt or trustee to make a payment or transfer an asset to any person affected by an order made under subsection (1).

(3) Subject to section 431, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the bankrupt entered into the transaction.

Limitations on orders under section 430

431. (1) This section applies to an order made under section 430(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in an asset that was acquired in good faith and for value from a person other than the bankrupt, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the trustee, except if that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the bankrupt.

(3) For the purposes of subsection (2), if a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph *(a)* or *(b)*, it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of—

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if he had notice of the application on which the bankruptcy order was made.

Recoveries

432. Any money paid to, asset recovered or other benefit received by the trustee as a result of an order made under section 430 is deemed to be an asset comprised in the bankrupt's estate that is available to pay his unsecured creditors.

Remedies not exclusive

433. This Part applies without prejudice to the availability of any other remedy.

Interpretation for sections 435 to 446

434. In sections 435 to 446—

(a) references to assets comprised in the bankrupt's estate or to assets possession of which is required to be delivered up to the trustee include any assets specified in section 348;

(b) "initial period" means the period between the filing of the application for the bankruptcy order and the commencement of the bankruptcy; and

(c) a reference to a number of months or years before the application is to that period ending with the filing of the application for the bankruptcy order.

Defence of innocent intention

435. (1) Subject to subsection (2), the bankrupt does not commit a bankruptcy offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(2) Subsection (1) does not apply to sections 437*(e)*, 439*(b)*, 439*(c)*, 439*(d)*, 439*(e)*, 443(1), 444 and 445.

Non-disclosure

436. (1) The bankrupt commits an offence if—

(a) he does not to the best of his knowledge and belief disclose all the assets comprised in his estate to the trustee; or

(b) he does not inform the trustee of any disposal of any assets which, but for the disposal, would be so comprised, stating how, when, to whom and for what consideration the asset was disposed of.

(2) Subsection (1)*(b)* does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Concealment of assets

437. (1) The bankrupt commits an offence if—

(a) he does not deliver up possession to the trustee, or as the trustee may direct, those assets comprised in his estate as are in his possession or under his control of which he is required by law so to deliver up;

(b) he conceals any debt due to or from him or conceals any asset, the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the trustee;

(c) in the twelve months before the application, or in the initial period, he did anything which would have been an offence under paragraph *(b)* if the bankruptcy order had been made immediately before he did it;

(d) he removes, or in the initial period removed, any asset the value of which was not less than the prescribed amount and possession of which he is or would have been required to deliver up to the trustee; or

(e) he 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 his assets incurred in the twelve months before the application or in the initial period; or

(ii) to give a satisfactory explanation of the manner in which such a loss was incurred.

(2) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Concealment of books and papers; falsification

438. (1) The bankrupt commits an offence if—

(a) he does not deliver up possession to the trustee, or as the trustee may direct, of all documents in his possession or control which relate to his estate or his affairs;

(b) he prevents, or in the initial period prevented, the production of any documents relating to his estate or affairs;

(c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any documents relating to his estate or affairs;

(d) he makes, or causes or permits the making of, any false entries in any documents relating to his estate or affairs;

(e) he disposes of, or alters or makes any omission in or causes or permits the disposal, altering or making of any omission in any document relating to his estate or affairs; or

(f) in the twelve months before the application, or in the initial period, he did anything which would have been an offence under paragraph *(c)*, *(d)* or *(e)* if the bankruptcy order had been made before he did it.

(2) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

False statements

439. (1) The bankrupt commits an offence if—

(a) he makes any false statement or any material omission in any statement made under this Ordinance relating to his affairs;

(b) knowing or believing that a false claim has been made by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(c) he attempts to account for any part of his assets by fictitious losses or expenses; or

(d) at any meeting of his creditors in the twelve months before the application or, whether or not at such a meeting, at any time in the initial period, he did anything which would have been an offence under paragraph *(c)* if the bankruptcy order had been made before he did it; or

(e) he is, or at any time has been, guilty of any false representation or other fraud for the purposes of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

(2) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Fraudulent disposal of assets

440. (1) The bankrupt commits an offence if—

(a) he makes or causes to be made, or has during the period of five years prior to the date of the bankruptcy order made or caused to be made, any gift or transfer of, or any charge on, his assets; or

(b) he conceals or removes, or has at any time before the commencement of the bankruptcy, concealed or removed, any of his assets after, or within 60 days before, the date on which a judgment or order for the payment of

money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(2) The reference in subsection (1) to making a transfer of or a charge on any asset includes causing or conniving at the levying of any execution against that asset.

(3) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Absconding

441. (1) The bankrupt commits an offence if—

(a) he leaves, or attempts or makes preparations to leave the Islands with any assets the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the Official Assignee or the trustee; or

(b) in the six months before the application, or in the initial period, he did anything which would have been an offence under paragraph *(a)* if the bankruptcy order had been made immediately before he did it.

(2) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Fraudulent dealing with asset obtained on credit

442. (1) The bankrupt commits an offence if, in the twelve months before the application, or in the initial period, he disposed of any asset which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) A person commits an offence if, in the twelve months before the application, or in the initial period, he acquired or received an asset from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the asset; and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money so owed.

(3) A person does not commit an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the asset 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 asset 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 asset.

(5) In this section, references to disposing of an asset include pledging it and references to acquiring or receiving an asset shall be read accordingly.

(6) A bankrupt who commits an offence under subsection (1) or subsection (2) is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $100,000 or to both.

Obtaining credit and engaging in business

443. (1) The bankrupt commits an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without informing the person from whom he obtains credit that he is an undischarged bankrupt;

(b) he engages, whether directly or indirectly, in any business under a name other than that in which he was made bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was made bankrupt.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) if goods are billed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement; and

(b) if he is paid in advance, whether in money or otherwise, for the supply of goods and services.

(3) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Failure to keep proper accounts of business

444. (1) If the bankrupt has been engaged in any business for any of the period of two years before the application, he commits an offence if he—

(a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged; or

(b) has not preserved all the accounting records which he has kept.

(2) The bankrupt is does not commit of an offence under subsection (1)—

(a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount; or

(b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.

(3) For the purpose of this section, a person is deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including—

(a) records containing entries from day to day, in sufficient detail, of all cash paid and received;

(b) if the business involves dealing in goods, statements of annual stock-takings; and

(c) except in the case of goods sold by way of retail trade to the actual customer, 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.

(4) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Gambling

445. (1) The bankrupt commits an offence if he has—

(a) in the two years before the application, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations; or

(b) in the initial period, lost any of his assets by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

(3) A bankrupt who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Supplementary provisions

446. (1) Proceedings for a bankruptcy offence may not be instituted after the annulment of the bankruptcy.

(2) Without limiting the liability of a bankrupt in respect of a subsequent bankruptcy, the bankrupt does not commit of an offence under this Part in respect of anything done after his discharge but nothing in this Ordinance prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

(3) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting that offence was done outside the Islands.

PART XIV

BANKRUPTCY RESTRICTIONS, ORDERS AND UNDERTAKINGS

Bankruptcy restrictions, orders and undertakings

447. (1) A bankruptcy restrictions order is an order that an individual shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A bankruptcy restrictions undertaking is an undertaking in writing given by an individual to the Official Assignee that he will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, an individual engages in a prohibited activity if he—

(a) is a director of a company;

(b) acts as the voluntary liquidator of a company;

(c) acts as the receiver of the assets of a company;

(d) acts as an insolvency practitioner;

(e) in any way, whether directly or indirectly, is concerned with or takes part in the promotion, formation or management of a company; or

(f) undertakes any activity prescribed as a prohibited activity.

Application for and hearing of application for bankruptcy restrictions order

448. (1) The Official Assignee may apply to the Court for a bankruptcy restrictions order against a bankrupt.

(2) On an application under subsection (1), the Court may make a bankruptcy restrictions order against a bankrupt if it considers it appropriate having regard to the conduct of the bankrupt, whether before or after the making of the bankruptcy order against him.

(3) Without limiting subsection (2), the Court shall in particular take into account—

(a) any behaviour of the bankrupt that constitutes a bankruptcy offence, whether or not the bankrupt has been convicted of the offence; and

(b) whether the bankrupt was an undischarged bankrupt at some time during the six years prior to the making of the bankruptcy order in respect of which the application is made.

Duration of bankruptcy restrictions order

449. (1) The Court shall, on making a disqualification order, specify the period for which the order has effect.

(2) The period referred to in subsection (1) shall commence on a date no earlier than the date of the order and no later than twenty-eight days after the date of the order and shall not exceed ten years.

Interim bankruptcy restrictions order

450. (1) In this section, "interim order" means an interim bankruptcy restrictions order.

(2) The Official Assignee may apply to the Court for an interim order at any time between—

(a) the filing by him of an application for a bankruptcy restrictions order; and

(b) the determination of that application.

(3) The Court may, on an application made under subsection (1), make an interim order against a bankrupt if it considers—

(a) that there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful; and

(b) it is in the public interest to make an interim order.

(4) An interim order shall—

(a) take effect on the date that it is made; and

(b) have the same effect as a bankruptcy restrictions order.

(5) An interim order shall cease to have effect—

(a) on the determination of the application for the bankruptcy restrictions order;

(b) on the acceptance of a bankruptcy restrictions undertaking made by a bankrupt; or

(c) on the discharge of the interim order by the Court on the application of the Official Assignee or the bankrupt.

Bankruptcy restrictions undertaking

451. (1) A bankrupt may offer the Official Assignee a bankruptcy restrictions undertaking, whether or not the Official Assignee has made an application against him for a bankruptcy restrictions order.

(2) The Official Assignee may accept an offer made to him under subsection (1) if he considers that—

(a) there is a reasonable prospect that, on the hearing of an application under section 448, the Court would make a bankruptcy restrictions order against the bankrupt offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A bankruptcy restrictions undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed ten years.

Variation of disqualification order or undertaking

452. (1) The Court may, on the application of the Official Assignee or a restricted person, vary a bankruptcy restrictions order or a bankruptcy restrictions undertaking.

(2) Without limiting subsection (1), an order under that subsection may—

(a) reduce the period for which the order, or undertaking, is in force; or

(b) provide for the order or undertaking to cease to be in force.

(3) An application made by a restricted person for an order under subsection (1) shall be served on the Official Assignee no less than fourteen days prior to the date of the hearing and the Official Assignee shall appear or be represented and is entitled to call or give evidence at the hearing.

Restricted person engaging in prohibited activities

453. A restricted person who engages in a prohibited activity commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of one year or to a fine of $25,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of two years or to a fine of $50,000 or to both.

Official Assignee to appear on certain applications

454. The Official Assignee shall appear and call the attention of the Court to any matters that seem to him to be relevant, and may himself give evidence or call witnesses on the hearing of—

(a) an application by the Official Assignee for a bankruptcy restrictions order; or

(b) any other application made under this Part.

Register of disqualification orders

455. (1) The Official Assignee shall register in a Register of Bankruptcy Restrictions Orders and Undertakings to be maintained by him for the purpose—

(a) each bankruptcy restrictions order and interim bankruptcy restrictions order made or bankruptcy restrictions undertaking accepted under this Part; and

(b) each variation of a bankruptcy restrictions order, an interim bankruptcy restrictions order or bankruptcy restrictions undertaking under this Part.

(2) When a bankruptcy restrictions order or undertaking ceases to be in force, the Official Assignee shall delete the entry from the Register.

(3) The Register of Bankruptcy Restrictions Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a restricted person by virtue of an entry in the Register of Bankruptcy Restrictions Orders and Undertakings.

Annulment of bankruptcy order

456. (1) If a bankruptcy order is annulled under section 335(1)*(a)*—

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled;

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt; and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

(2) If a bankruptcy order is annulled under section 420(1)*(b)*—

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt;

(b) the Court may make a bankruptcy restrictions order or an interim order in respect of the bankrupt on an application instituted before the annulment;

(c) the Official Assignee may accept a bankruptcy restrictions undertaking offered by the bankrupt before the annulment; and

(d) an application for a bankruptcy restrictions order may not be instituted after the annulment.

PART XV

GENERAL PROVISIONS WITH REGARD TO INSOLVENCY PROCEEDINGS

Interpretation for and scope of this Part

457. (1) In this Part—

"fixing remuneration" includes fixing the currency of payment;

"insolvency proceeding" means the insolvency proceeding in respect of which an insolvency practitioner is appointed;

"insolvency practitioner" means an administrator, liquidator, bankruptcy trustee, receiver, supervisor or interim supervisor, as the case may be; and

"office holder" means—

(a) in respect of a company, its administrator, its liquidator or its administrative receiver;

(b) in respect of an unregistered company, its liquidator; and

(c) in respect of an individual, his bankruptcy trustee.

(2) A reference in this Part to an officer holder is to the office holder appointed in the insolvency proceeding in respect of which the creditors' committee is appointed.

Creditors' committee

Establishment of creditors' committee

458. (1) The creditors of a company in liquidation, administration or administrative receivership or of a bankrupt may, by resolution passed at a meeting, establish a creditors' committee—

(a) in the case of a company in administration, at any time after the approval of the administrator's proposals;

(b) in the case of a company in administrative receivership, at any time after the appointment of the administrative receiver;

(c) in the case of a company in liquidation, at any time after the appointment of the liquidator; and

(d) in the case of an individual, at any time after the bankruptcy order.

(2) A resolution to establish a creditors' committee shall also appoint the first members of the committee, each of whom shall be eligible to serve on the committee in accordance with the Insolvency Rules.

(3) A resolution to establish a creditors' committee may only be passed—

(a) in the administration, administrative receivership or liquidation of a company—

(i) at a meeting called under section 91, 143 or 180; or

(ii) at a meeting requisitioned for the purpose by at least 10% in value of the creditors of the company; and

(b) in the bankruptcy of an individual, at a meeting of the creditors called under section 373.

(4) If a creditors' committee is established, notice shall be given in accordance with the Insolvency Rules.

Functions and powers of creditors' committee

459. (1) The functions of a creditors' committee are—

(a) to consult with the office holder about matters relating to the insolvency proceeding;

(b) to receive and consider reports of the insolvency holder;

(c) to assist the officer holder in discharging his functions; and

(d) to discharge any other functions assigned to it under this Ordinance or the Insolvency Rules.

(2) A creditors' committee may—

(a) call a meeting of creditors;

(b) on giving the office holder reasonable notice, require him to provide the committee with such reports and information concerning the insolvency proceeding as the committee reasonably requires; and

(c) on giving the office holder not less than five business days' notice, require him to attend before the committee at any reasonable time to provide it with such information and explanations concerning the insolvency proceeding as it reasonably requires.

(3) If the creditors' committee requires the attendance of the office holder at a meeting under subsection (2)*(c)*—

(a) the notice shall be signed in writing by a majority of the members of the committee; and

(b) the meeting shall be fixed for a business day and shall be held at such time and place as the committee may agree with the office holder.

(4) The designated representative of a committee member may sign a notice under subsection (3)*(a)* on the member's behalf.

(5) Unless expressly permitted to do so by the Ordinance or the Insolvency Rules, a creditors' committee cannot give directions to the officer holder.

(6) A creditors' committee may, by resolution, adopt rules that are not inconsistent with this Ordinance or the Insolvency Rules.

Members dealing with company

460. (1) In the case of the administration or administrative receivership of a company, membership of the creditors' committee does not prevent a person from dealing with the company while the officer holder is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

(2) The Court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this section, and may give such consequential directions as it considers fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

(3) The Insolvency Rules may specify procedures for dealing with potential or actual conflicts of interest of committee members.

Formal defects

461. The acts of a creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or in the formalities of its establishment.

Remuneration

Remuneration of administrator, liquidator or bankruptcy trustee

462. (1) The remuneration of an administrator, liquidator or bankruptcy trustee is fixed—

(a) by the creditors' committee, if any;

(b) if there is no creditors' committee, if approved in accordance with the Insolvency Rules by 75% in value of the creditors; or

(c) by the Court on an application made under subsection (2).

(2) An administrator, liquidator or bankruptcy trustee may apply to the Court to fix his remuneration and expenses, or to fix an interim payment under section 465, if—

(a) no creditors' committee is appointed and the creditors fail, for whatever reason, to fix his remuneration and expenses, or an interim payment;

(b) the creditors' committee fails, for whatever reason, to fix his remuneration and expenses, or an interim payment; or

(c) he considers that the remuneration and expenses, or an interim payment, fixed by the creditors' committee or the creditors—

(i) is insufficient;

(ii) is not in an appropriate currency; or

(iii) is on unacceptable terms.

(3) Not less than fourteen days' notice of an application under subsection (2) shall be given—

(a) in the case of an administrator, to the company in administration;

(b) in the case of a bankruptcy trustee, to the bankrupt; and

(c) in any other case—

(i) to each member of the creditors' committee; or

(ii) if there is no creditors' committee, to such creditors as the Court may direct.

(4) The members of the creditors' committee or, if there is no creditors' committee, the creditors given notice of the hearing may appear and be heard at the hearing of an application made under subsection (2).

(5) On the hearing of an application under subsection (2), the Court shall fix the remuneration and expenses of the administrator, liquidator or bankruptcy trustee at such amount as it considers appropriate.

(6) In this section, "liquidator" does not include a provisional liquidator.

Application by creditors for reduction of remuneration

463. (1) If the creditors' committee has fixed the remuneration and expenses of an administrator, liquidator or bankruptcy trustee, a creditor may, with the concurrence of at least 25% in value of the creditors, including himself, apply to the Court for an order reducing the remuneration and expenses fixed on the grounds that they are excessive.

(2) On an application made under subsection (1), the Court may—

(a) if it considers that the applicant has not shown sufficient cause for a reduction, dismiss the application; or

(b) set a venue for the application to be heard.

(3) An application shall not be dismissed under subsection (2)*(a)* unless the Court has given the applicant the opportunity to attend the Court for an *ex parte* hearing, of which he has been given at least seven days' notice.

(4) An applicant for an order under subsection (1) shall give the administrator, liquidator or bankruptcy trustee not less than fourteen days' notice of the date, time and place set by the Court under subsection (2).

(5) If it considers that the remuneration and expenses of the administrator, liquidator or bankruptcy trustee fixed by the creditors' committee is excessive, the Court shall fix the remuneration and expenses to such amount as it considers appropriate.

General principles to be applied in fixing remuneration

464. (1) This section applies to the fixing of the remuneration of —

(a) an administrator, liquidator or bankruptcy trustee by a creditors' committee under section 462(1)*(a)*;

(b) an administrator, liquidator or bankruptcy trustee by the creditors under section 462(1)*(b)*;

(c) an administrator, liquidator or bankruptcy trustee by the Court under section 462(1)*(c)*;

(d) a provisional liquidator by the Court under section 173 and of an interim receiver by the Court under section 344;

(d) a receiver by the Court under section 129;

(e) a supervisor or interim supervisor by the Court under section 48 or 320; and

(f) an administrator, liquidator or bankruptcy trustee by the Court under section 462(5).

(2) Subject to subsection (3), the remuneration of an insolvency practitioner shall be fixed by reference to the time properly given by him and his staff in carrying out his duties in the insolvency proceeding.

(3) If the insolvency practitioner so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of an insolvency practitioner may be fixed in whole or in part as a percentage of the value of the assets realised and the value of the assets distributed, or as a percentage of either.

(4) When fixing the remuneration of an insolvency practitioner in the circumstances specified in subsection (1) or sanctioning an interim payment under section 465(3), the creditors' committee or the Court—

(a) shall take into account—

(i) the need for the remuneration to be fair and reasonable;

(ii) the time properly spent by the insolvency practitioner and his staff in carrying out his duties;

(iii) the complexity of the insolvency proceeding and whether the insolvency practitioner has been required to take any responsibility of an exceptional kind or degree;

(iv) the effectiveness with which the insolvency practitioner is carrying out, or has carried out, his duties;

(v) the value and nature of the assets with which the insolvency practitioner has had to deal;

(vi) the hourly rates charged by other insolvency practitioners, both within and outside the Islands, in undertaking similar work; and

(b) may take into account—

(i) the commercial and personal risks accepted by the insolvency practitioner;

(ii) the time spent by the insolvency practitioner and his staff outside the Islands and the amount of travelling required;

(iii) the standards and practice used for assessing remuneration in jurisdictions other than the Islands.

Time for fixing remuneration and interim payments

465. (1) The remuneration of an office holder shall be fixed by the creditors' committee or the Court after the conclusion of the insolvency proceeding.

(2) In fixing the remuneration of an office holder, the creditors' committee or the Court shall take account of any interim payment made under subsection (3).

(3) Notwithstanding subsection (1), a creditors' committee, the creditors or the Court may at any time set an interim payment to be made to the insolvency practitioner on account of his remuneration.

(4) An interim payment may be made under subsection (3) subject to such conditions as the creditors' committee, the creditors or the Court considers appropriate.

PART XVI

ORDERS IN AID OF FOREIGN PROCEEDINGS

Interpretation for this Part

466. (1) In this Part—

"domestic insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to this Ordinance, or to any other law of the Islands, relating to—

(a) the bankruptcy, liquidation, administration or receivership of a debtor; or

(b) the reorganisation of a debtor's affairs,

if, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors;

"foreign proceeding" means a collective judicial or administrative proceeding in a relevant foreign country, including an interim proceeding, pursuant to a law relating to insolvency 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, liquidation or bankruptcy and "debtor" shall be construed accordingly;

"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;

"insolvency officer" means the Official Assignee, a liquidator, provisional liquidator, bankruptcy trustee, administrator, receiver, supervisor, or interim supervisor; and

"relevant foreign country" means a country, territory or jurisdiction designated by the Commission as a relevant foreign country for the purposes of this Part.

(2) Notwithstanding subsection (1), a country or territory that is designated as a designated country for the purposes of the Insolvency Rules relating to cross border insolvency ceases to be a relevant foreign country from the date of its designation as a designated country.

(3) The designation of a country for the purposes of the Insolvency Rules relating to cross border insolvency does not affect the validity of any order made under this Part.

Order in aid of foreign proceeding

467. (1) For the purposes of this section "property" means property that is subject to or involved in the foreign proceeding in respect of which the foreign representative is authorised.

(2) A foreign representative may apply to the Court for an order under subsection (3) in aid of the foreign proceeding in respect of which he is authorised.

(3) Subject to section 468, upon an application under subsection (1), the Court may—

(a) restrain the commencement or continuation of any proceedings, execution or other legal process or the levying of any distress against a debtor or in relation to any of the debtor's property;

(b) subject to subsection (4), restrain the creation, exercise or enforcement of any right or remedy over or against any of the debtor's property;

(c) require any person to deliver up to the foreign representative any property of the debtor or the proceeds of such property;

(d) make such order or grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of a domestic insolvency proceeding with a foreign proceeding;

(e) appoint an interim receiver of any property of the debtor for such term and subject to such conditions as it considers appropriate;

(f) authorise the examination by the foreign representative of the debtor or of any person who could be examined in a domestic insolvency proceeding in respect of a debtor;

(g) stay or terminate or make any other order it considers appropriate in relation to a domestic insolvency proceeding; or

(h) make such order or grant such other relief as it considers appropriate.

(4) An order under subsection (3) shall not affect the right of a secured creditor to take possession of and realise or otherwise deal with property of the debtor over which the creditor has a security interest.

(5) In making an order under subsection (3), the Court may apply the law of the Islands or the law applicable in respect of the foreign proceeding.

Matters to be considered by Court in determining application under section 467

468. (1) In determining an application under section 467, the Court shall be guided by what will best ensure the economic and expeditious administration of the foreign proceeding to the extent consistent with—

(a) the just treatment of all persons claiming in the foreign proceeding;

(b) the protection of persons in the Islands who have claims against the debtor against prejudice and inconvenience in the processing of claims in the foreign proceeding;

(c) the prevention of preferential or fraudulent dispositions of property subject to the foreign proceeding, or the proceeds of such property;

(d) the need for distributions to claimants in the foreign proceedings to be substantially in accordance with the order of distributions in an insolvency in the Islands governed by this Ordinance; and

(e) comity.

(2) An order under section 467 shall not, without the consent of the person concerned—

(a) affect the right of any creditor of the debtor to benefit from set-off as provided for in section 151; or

(b) result in a person who is a preferential creditor of the debtor, or who in a domestic insolvency proceeding in respect of the debtor would be a preferential creditor, receiving less than he would receive in a domestic insolvency proceeding.

(3) The Court shall not make an order under section 467 that is contrary to public policy.

Limitation on effect of application under this Part

469. (1) Subject to subsection (2), an application to the Court by a foreign representative under section 467 does not submit the foreign representative to the jurisdiction of the Court for any other purpose except with regard to the costs of the proceedings.

(2) The Court may make an order under this Part conditional on the compliance by the foreign representative with any other order of the Court.

Additional assistance

470. Nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative if permitted under any other Part of this Ordinance or under any other law or rule of law.

Application under this Part

471. An application by a foreign representative under this Part shall be made to the Court in accordance with the Insolvency Rules.

Authorisation of insolvency officer to act in foreign country

472. The Court may, on the application of an insolvency officer, authorise him to act in a foreign country on behalf of a domestic insolvency proceeding as permitted by the applicable foreign law.

PART XVII

MISCELLANEOUS PROVISIONS

Appointment of two or more office holders

473. (1) If this Ordinance provides for the appointment of a supervisor, interim supervisor, administrator, receiver, liquidator, provisional liquidator, interim receiver or bankruptcy trustee, two or more persons may be jointly appointed to the relevant office.

(2) If two or more persons are jointly appointed to an office, a function or power of the office may be performed or exercised by any one of the office holders, or by any two or more of them together, except so far as the order, deed, instrument or resolution appointing them otherwise provides.

Notices

474. (1) Subject to subsection (2), all notices required or authorised to be given by or under this Ordinance or the Insolvency Rules shall be in writing.

(2) Subsection (1) does not apply if—

(a) this Ordinance or the Insolvency Rules provide otherwise; or

(b) the Court requires or permits a notice to be given in some other way.

Time

475. (1) Unless this Ordinance or the Insolvency Rules expressly provide otherwise, if the Ordinance or the Insolvency Rules specify a time within which an action shall or may be done, the Court may—

(a) extend the time either before or after it has expired; or

(b) abridge the time,

on such terms as it considers appropriate.

(2) Without limiting subsection (1), if it is satisfied that an application is urgent, the Court may—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by the Ordinance or the Insolvency Rules.

Resolutions

476. (1) Anything which is required or permitted to be done under this Ordinance or the Insolvency Rules by a resolution of the creditors of a company, a bankrupt or an individual debtor, by a resolution of a creditors' committee or by a resolution of the members of a company may be done by written resolution of the creditors, creditors' committee or members in accordance with and subject to any conditions specified in the Insolvency Rules.

(2) The Insolvency Rules may specify types or classes of resolution to which subsection (1) does not apply.

(3) Subject to subsection (2)—

(a) a reference in this Ordinance or the Insolvency Rules to a resolution of a creditors' or members' meeting or to anything done at a creditors' or members' meeting includes a reference to anything done by a written resolution in accordance with this section; and

(b) a requirement to hold a creditors' or members' meeting is satisfied by the passing of a written resolution in accordance with this section.

Insolvency Surplus Account

477. (1) The Commission shall maintain one or more accounts together referred to in this section as the Insolvency Surplus Account with a bank that holds a licence issued under the Banking Ordinance.

(2) The Commission shall pay into the Insolvency Surplus Account all monies representing the unclaimed assets of companies and bankrupts that are received by it in accordance with the Insolvency Rules.

(3) The Insolvency Rules may provide for the management of the Insolvency Surplus Account by the Commission, the investment of monies held in the Insolvency Surplus Account and the circumstances in which monies shall or may be paid into and out of the Insolvency Surplus Account.

Insolvency Rules

478. (1) The Governor may make Insolvency Rules generally for giving effect to this Ordinance and specifically in respect of anything required or permitted to be prescribed by this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Rules may—

(a) provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed by the Rules;

(b) provide for the implementation in the Islands of any international treaty or other measure relating to insolvency including but not limited to the Model Law on Cross Border Insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997;

(c) provide for the liquidation of partnerships as unregistered companies, specifying which provisions of this Ordinance shall apply to insolvent partnerships and the modifications applicable to insolvent partnerships; and

(d) specify which provisions of this Ordinance shall apply to the administration of insolvent estates of deceased persons and the modifications applicable to the administration of such estates.

(3) The Rules may—

(a) make different provision for different persons, circumstances or cases; and

(b) contain such incidental, supplemental and transitional provisions as the Governor considers necessary or expedient.

Approval of forms by Commission

479. (1) The Commission may, by publication in the prescribed manner, approve forms for the purposes of this Part, the Rules, the Insolvency Practitioners Regulations or the Insolvency Practitioners Code.

(2) If the Commission has published an approved form in respect of a document to be filed, issued or produced under this Ordinance, the Insolvency Rules or any regulations made under this Ordinance, the document shall—

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.

(3) An approved form shall not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

Offences by corporate bodies

480. If an offence under this Ordinance is committed by a body corporate, a director or officer who authorised, permitted or acquiesced in the commission of the offence also commits the offence and is liable to the same penalty as the body corporate.

Transitional provisions

481. (1) The Governor may, by regulations, provide for transitional provisions.

(2) The regulations referred to in subsection (1) may be included in the Insolvency Rules or may be made as separate regulations.

SCHEDULE 1

POWERS OF ADMINISTRATOR AND ADMINISTRATIVE RECEIVER

1. Power to take possession of, collect and get in the assets of the company and, for that purpose, to take such proceedings as he considers expedient to recover possession of any assets of the company.
2. Power to sell, charge or otherwise dispose of assets of the company.
3. Power to borrow money, whether on the security of the assets of the company, or otherwise.
4. Power to appoint an attorney or accountant or other professionally qualified person to assist the administrator or administrative receiver in the performance of his functions.
5. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and assets of the company.
8. Power to draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company.
9. Power to appoint any agent to do any business which he is unable to do himself or which can be more conveniently done by an agent and power to employ and dismiss employees.
10. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the assets of the company.
11. Power to make any payment which is necessary or incidental to the performance of his functions or that he thinks it likely to assist in the achievement of the objectives of the administration.
12. Power to carry on the business of the company.
13. Power to establish subsidiaries of the company.
14. Power to transfer to subsidiaries of the company the whole or any part of the business and assets of the company.
15. Power to grant or accept a surrender of a lease or tenancy of any of the assets of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
16. Power to make any arrangement or compromise on behalf of the company.
17. Power to call up any uncalled capital of the company.
18. Power to rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

19. Power to make or defend an application for the winding up of the company.

20. Power to amend the Memorandum of Association and to change the situation of the company's registered office.

21. Power to do all things incidental to the exercise of the foregoing powers.

SCHEDULE 2

POWERS OF LIQUIDATOR

1. Power to pay any class of creditors in full.

2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.

3. Power to compromise, on such terms as may be agreed—

   (a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and

   (b) questions in any way relating to or affecting the assets or the liquidation of the company, and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

4. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.

6. Power to sell or otherwise dispose of property of the company.

7. Power to do all acts and execute, in the name and on behalf of the company, any deeds, receipts or other document.

8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the company.

    This power is for the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself.

13. Power to call meetings of creditors or members for—

(a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;

(b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or

(c) such other purpose connected with the liquidation as the liquidator considers appropriate.

14. Power to appoint an attorney, accountant or other professionally qualified person to assist him in the performance of his duties.

15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

———————

SCHEDULE 3

POWERS OF BANKRUPTCY TRUSTEE

Part I - Powers Exercisable With Sanction

1. Power to carry on any business so far as may be necessary for winding it up beneficially and so far as the bankruptcy trustee is able to do so without contravening any requirement imposed by or under any enactment.
2. Power to bring, institute or defend any action or legal proceedings relating to the assets comprised in the bankrupt's estate.
3. Power to accept as the consideration for the sale of any asset comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditor's committee or the Court considers fit.
4. Power to mortgage or pledge any part of the assets comprised in the bankrupt's estate for the purpose of raising money for the payment of his liabilities.
5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any asset which is the subject of the right, option or power.
6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.
7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect to bankruptcy liabilities.
8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the bankruptcy trustee by any person or by the trustee on any person.

Part 2 - General Powers

9. Power to sell any of the assets for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.
10. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.
11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.
12. Power to exercise in relation to any asset comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Part XII of this Ordinance.

13. Power to deal with any asset comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

14. Power to at any time summon a general meeting of the bankrupt's creditors.

Part 3 - Ancillary Powers

15. For the purposes of, or in connection with, the exercise of any of his powers under Part XII of this Ordinance, the bankruptcy trustee may, by his official name—

(a) hold assets of every description;

(b) make contracts;

(c) sue and be sued;

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office;

(e) employ an agent;

(f) execute any power of attorney, deed or other instrument,

and the trustee may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

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INSOLVENCY RULES

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GENERAL PROVISIONS

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INSOLVENCY RULES

(Legal Notice 14/2019)

Commencement

[1 April 2019]

PART I

PRELIMINARY

Citation

1. These Rules may be cited as the Insolvency Rules.

Interpretation

2. (1) In these Rules—

"approved electronic form", in relation to documents filed with the Court, has the meaning specified in rule 315;

"contact details", in respect of a person, means—

(a) a telephone number;

(b) a fax number;

(c) an e-mail address; or

(d) another method of communication, not being a physical address;

"Court Rules" means the Rules of the Supreme Court;

"practice direction" means a direction as to practice and procedure issued by the Court under rule 316;

"Rules" means these Rules.

(2) The debts set out in the Schedule are prescribed as preferential debts.

(3) Unless otherwise provided, the words and expressions defined in the Ordinance have the same meaning in the Rules.

Meaning of "connected person"

3. (1) For the purposes of the Ordinance and these Rules, "connected person" shall be construed in accordance with this rule.

(2) A person is connected with an individual if the person is—

(a) the individual's spouse;

(b) a relative of the individual or of the individual's spouse; or

(c) the spouse of a relative of the individual or of the individual's spouse.

(3) A person is connected with a company if the person—

(a) is a director of the company;

(b) is a parent or subsidiary of the company; or

(c) has control of the company.

(4) A person is connected with—

(a) a person with whom the person is in partnership; or

(b) a person who is a connected person in relation to a person with whom the person is in partnership.

(5) A person is connected with any person whom he employs or who employs him.

(6) For the purposes of sub-rule (2), a person is a relative of an individual if the person is the 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 a person as his child; and

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

(7) A reference in sub-rule (6) to a spouse include a former or reputed spouse.

(8) For the purposes of sub-rule (3), a person has control of a company if the person, whether acting alone or jointly with one or more other persons, if—

(a) the directors of the company or a parent of the company 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 the company.

PART II

COMPANY ARRANGEMENTS

Application of this Part

4. (1) This Part applies when it is intended to make, and there is made, a proposal under Part III of the Ordinance for a company arrangement and in respect of any company arrangement that may be approved.

(2) In this Part, "creditors' meeting" means a creditors' meeting held under Part III of the Ordinance.

Proposal and statement of affairs

Proposal

5. (1) A proposal by the directors shall be in writing and shall include—

(a) details of the name, registered office, date of incorporation and any trading names of the company;

(b) a summary of the proposed arrangement with a brief explanation as to its main features, why the arrangement is desirable and why the directors expect the creditors to agree to it;

(c) to the best of the knowledge and belief of the directors, particulars of the assets of the company specifying—

(i) the value of each asset or class of assets;

(ii) the extent, if any, to which the assets are charged in favour of creditors; and

(iii) the extent, if any, to which particular assets are to be excluded from the arrangement;

(d) particulars of any assets, other than those of the company, which it is proposed will be included in the arrangement, specifying—

(i) the source of the assets; and

(ii) the terms upon which they are to be made available to creditors under the arrangement;

(e) to the best of the knowledge and belief of the directors, particulars of the nature and amount of the company's liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular—

(i) how it is proposed that creditors who are or who claim to be secured creditors will be dealt with, detailing the amount of any secured liabilities;

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected persons in relation to the company will be dealt with;

(iii) whether there are, to the knowledge of the directors, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims for a voidable transaction under Part IX of the Ordinance and, if so, whether and how it is proposed to make provision for wholly or partly indemnifying the company in respect of such claims;

(iv) whether there are any persons with non-admissible or postponed claims against the company and how it is proposed that they will be dealt with, if at all;

(v) any creditors who, for the purposes of section 23(4) of the Ordinance, are or are expected to be or claim to be preferential creditors, detailing the amount and nature of each such claim and how it is proposed that the claims will be dealt with;

(f) how it is proposed that the claims of any creditor who did not participate in the approval of the arrangement, as provided by sub-rule (3), will be dealt with;

(g) particulars of any security interest, liens, rights of set-off held by creditors and as to any guarantees of the company's debts given by third parties, specifying which of the guarantors, if any, are connected persons in relation to the company;

(h) details of the proposed duration of the arrangement;

(i) the proposed dates of distributions of assets to creditors of the company, with estimates of their amounts;

(j) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(k) details of any benefits, including guarantees, assets and any security interests that are to be offered by any director or other third party for the purposes of the arrangement;

(l) details of any further loans or credit facilities which it is intended to arrange for the company, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(m) details of the business that will be conducted by the company during the course of the arrangement and the manner in which funds payable to the company will be dealt with during the period before the arrangement is approved and during the course of the arrangement, if approved;

(n) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(o) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(p) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved;

(q) if the supervisor is to carry on the business of the company or trade on its behalf and in its name, details of the extent of the business to be carried on by the supervisor and the basis on which the supervisor will carry on that business or trade on its behalf; and

(r) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he is, eligible to act in relation to the company.

(2) If a proposal is being made by the administrator or liquidator, the proposal shall specify all the matters that the directors would be required to include under sub-rule (1), with such modifications as are necessary, with the addition of the date on which the company entered into administration or liquidation and the nature and amount of the company's preferential creditors.

(3) For the purposes of sub-rule (1)*(f)*, a creditor does not participate in the approval of the arrangement if, for whatever reason—

(a) he was not given notice of the creditors' meeting called under section 34 of the Ordinance; and

(b) he did not attend the meeting at which the arrangement was approved, whether in person or by proxy.

(4) If a company is in liquidation, and the liquidator was appointed by the Court under section 170 of the Ordinance, the nominee shall give notice of the proposal to the Official Assignee.

Statement of affairs

6. (1) The statement of affairs provided to the nominee under section 27(1)*(c)* of the Ordinance shall—

(a) supplement or amplify, so far as is necessary for clarifying the state of the company's affairs, the information and matters already included in the proposal; and

(b) contain, in addition to the matters required under rule 127, such other matters as the nominee requires.

(2) Subject to sub-rule (3), the statement of affairs shall be made up to a date not earlier than two weeks before the date of the notice provided to the nominee under section 27(1)*(d)* of the Ordinance.

(3) The nominee may allow an extension of the period specified in sub-rule (2) to the nearest practicable date, not earlier than two months before the date of the notice provided under section 27(1)*(d)* of the Ordinance.

(4) The statement of affairs shall be verified by at least one director of the company.

Amendment or withdrawal of proposal before appointment of interim supervisor

7. (1) The directors of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may before the nominee has accepted appointment as interim supervisor—

(a) amend a proposal by providing a copy of the amended proposal to the nominee; or

(b) withdraw the proposal by providing a notice of withdrawal to the nominee.

(2) In the case of a company that is not in administration or liquidation, the nominee shall also be provided with a copy of the resolution of the directors approving the amendment or withdrawal.

(3) The withdrawal of a proposal under section 33(1)*(a)* of the Ordinance takes effect from the time that the notice of withdrawal is received by the nominee.

(4) The nominee shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the directors, administrator or liquidator, as the case may be.

Amendment or withdrawal of proposal after appointment of interim supervisor

8. (1) This rule applies if the directors of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wish to amend or withdraw a proposal after the appointment of an interim supervisor but before a creditors' meeting is called under section 34 of the Ordinance.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the directors' resolution before the interim supervisor calls a creditors' meeting under section 34 of the Ordinance; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Without limiting sub-rule (2)*(b)*, the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to prepare a report on the amended proposal before giving notice of the creditors' meeting under section 34 of the Ordinance.

(4) A proposal may be withdrawn under section 33(1)*(b)* of the Ordinance by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the directors' resolution, before the interim supervisor calls a creditors' meeting under section 34 of the Ordinance.

(5) On receipt of a notice of withdrawal in accordance with sub-rule (4), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the directors, administrator or liquidator, as the case may be.

(6) The withdrawal of a proposal under section 33(1)*(b)* of the Ordinance, and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(7) If the interim supervisor has filed a notice of his appointment with the Registrar and, if appropriate, provided a copy to the Commission, he shall, within two business days of receiving the withdrawal notice, file a copy of the notice with the Registrar and, if appropriate, provide a copy to the Commission.

(8) If a proposal is withdrawn under this rule, the company is liable to the former interim supervisor in respect of any costs and remuneration payable to him, including the costs of complying with sub-rule (7).

Amendment or withdrawal of proposal before creditors' meeting

9. (1) This rule applies if the directors of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the calling of a creditors' meeting under section 34 of the Ordinance but before the meeting is held.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the directors' resolution at least seven days prior to the date fixed in the notice calling the meeting under section 34 of the Ordinance; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) If a proposal is amended under this rule, the interim supervisor shall give at least two business days' notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 34 of the Ordinance.

(4) Without limiting sub-rule (2)*(b)*, the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to comply with sub-rule (3).

(5) A proposal may be withdrawn under section 33(1)*(c)* of the Ordinance by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the directors' resolution, at least five business days prior to the date fixed for the creditors' meeting called under section 34 of the Ordinance.

(6) On receipt of a notice of withdrawal in accordance with sub-rule (5), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the directors, administrator or liquidator, as the case may be.

(7) The withdrawal of a proposal under section 33(1)*(c)* of the Ordinance, and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(8) Forthwith on receiving a notice of withdrawal under sub-rule (5), the former interim supervisor shall—

(a) send a notice cancelling the creditors' meeting to every creditor, member and director of the company and to the company itself; and

(b) file a copy of the notice of withdrawal with the Registrar and, if the company is a licensee, provide a copy to the Commission.

(9) If a proposal is withdrawn under section 33(1)*(c)* of the Ordinance, the company is liable to the former interim supervisor in respect of any costs and remuneration payable to him, including the costs of complying with sub-rule (8).

Effect of amendment or withdrawal of proposal

10. If a proposal is amended under rules 7, 8 or 9, Part III of the Ordinance applies to the amended proposal as if it was the original proposal.

Appointment of interim supervisor by directors

11. If the insolvency practitioner nominated by the directors of a company agrees to act as interim supervisor, he shall—

(a) cause a copy of the notice of intention to appoint him as interim supervisor to be endorsed with—

(i) an acknowledgement that he has received a copy of the resolution of the directors together with a copy of the proposal approved by the directors and a copy of the company's statement of affairs;

(ii) the date upon which he received the notice of intention to appoint him as interim supervisor and copies of the resolution, the proposal and the statement of affairs;

(iii) the date or dates upon which he received an amended proposal from the directors or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the company; and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed notice to the directors at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

Appointment by administrator or liquidator of another insolvency practitioner as interim supervisor

12. (1) If the administrator or liquidator of a company intends to appoint another insolvency practitioner as interim supervisor, the notice of intention to appoint shall be in the form for an appointment made by the directors of a company, with suitable modifications.

(2) If the insolvency practitioner whom the administrator or liquidator intends to appoint as interim supervisor agrees to act, he shall—

(a) cause a copy of the notice of intention to appoint him as interim supervisor to be endorsed with—

(i) an acknowledgement that he has received a copy of the proposal;

(ii) the date upon which he received the proposal;

(iii) the date or dates upon which he received an amended proposal from the administrator or liquidator or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the company; and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed notice to the administrator or liquidator at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

Reports to creditors

13. (1) The report that the interim supervisor is required to make to the creditors' meeting called to consider the directors' proposal, shall include—

(a) in the case of an interim supervisor appointed by the directors of a company, a summary of the affairs of the company and the conduct of its business during the proposal period;

(b) in the case of a company that is not in liquidation or administration, his opinion as to whether the company is insolvent or likely to become insolvent;

(c) his opinion as to whether the arrangement which is being proposed has a reasonable prospect of being implemented;

(d) the costs to the company of his acting as interim supervisor;

(e) any other matters that he considers should be brought to the attention of the creditors.

(2) The supervisor's report to creditors on a proposed modification to an arrangement shall include—

(a) details of the proposed modification together with an explanation as to why the supervisor considers that the modification is necessary or desirable;

(b) a brief summary of the implementation of the arrangement to the date of the report, including details of any material differences between the implementation and the proposal approved by creditors; and

(c) any other information that the supervisor considers would assist the creditors in deciding whether to approve the modification.

General provisions to apply

14. Rules 274 to 294 apply to a creditors' meeting held under Part III of the Ordinance, subject to any modification required by rules 15 to 17.

Chairman of creditors' meeting

15. Subject to rule 274(2) and (3), the interim supervisor or the supervisor shall be the chairman of every creditors' meeting.

Entitlement to vote and admission and rejection of claims

16. (1) A creditor is not entitled to vote at a creditors' meeting unless written notice of his claim is given to the interim supervisor, or supervisor, or the chairman of the meeting either at the meeting or before it.

(2) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to the votes being subsequently declared invalid if the objection to the claim is sustained.

(3) At any creditors' meeting held under Part III of the Ordinance, a creditor may vote in respect of a claim for an unliquidated amount or on any claim the value of which is not ascertained and for the purposes of voting, but not otherwise, his claim shall be valued at $1.00 unless the chairman agrees to put a higher value on it.

Requisite majorities at creditors' meeting

17. (1) The majority required for the passing of a resolution at a creditors' meeting is—

(a) for the approval of an arrangement or of a modification of an arrangement, 75% or more in value of the creditors present in person or by proxy who vote on the resolution; and

(b) in respect of any other matter, in excess of 50% in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

(a) to whom notice of the meeting was sent;

(b) who are not entitled to vote by reasons of rule 16(1) or rule 281(2) or if the claim, or the part voted on, is secured; and

(c) who are not, to the best of the chairman's belief, connected persons in relation to the company.

(3) It is for the chairman of the meeting to decide whether under this rule a person is a connected person for the purposes of sub-rule (2)*(c)*.

Other person appointed supervisor

18. If a resolution is moved for the appointment of some person other than the interim supervisor to be supervisor of the arrangement, evidence acceptable to the chairman that the person

is an eligible insolvency practitioner in relation to the company must be produced to the chairman at or before the meeting.

Appointment of joint supervisors

19. Joint supervisors of an arrangement may act jointly or severally unless the arrangement provides otherwise.

Withdrawal of proposal

20. (1) A proposal may be withdrawn at the creditors' meeting under section 38(4) of the Ordinance by providing to the chairman of the meeting at any time before the proposal has been accepted by the creditors a notice of withdrawal and, if appropriate, a copy of the directors' resolution.

(2) If a proposal is withdrawn under section 38(4) of the Ordinance, the chairman's report under section 39 of the Ordinance shall state that fact.

(3) The interim supervisor's appointment is terminated with effect from the conclusion of the creditors' meeting at which the proposal was withdrawn.

(4) If a proposal is withdrawn under section 38(4) of the Ordinance, the company is liable to the former interim supervisor in respect of any costs and remuneration payable to him, including the costs of complying with section 39 of the Ordinance.

Interim supervisor's report

21. The interim supervisor's report under section 39 of the Ordinance shall—

(a) state whether the proposal for a company arrangement was approved by the creditors of the company and whether the approval was with any modifications;

(b) set out the resolutions which were taken at the meeting, and the decision on each one;

(c) list the creditors of the company who were present or represented at the meetings, stating their respective values, and how they voted on each resolution;

(d) include such further information, if any, that the interim supervisor thinks it appropriate to provide to the creditors.

Termination of arrangement

22. If an arrangement terminates prior to its completion, the supervisor shall, in the report prepared under rule 25(2)*(c)* explain the reason why the arrangement has terminated.

Application under section 50 or 51 of the Ordinance

23. (1) A person, other than the supervisor or interim supervisor, who makes an application to the Court under section 50 or section 51 of the Ordinance shall serve a sealed copy of the application on the supervisor or interim supervisor at least seven days before the date fixed for the hearing.

(2) If the Court makes an order under section 50 or section 51 of the Ordinance on the application of a person other than the supervisor or interim supervisor, the person who applied for the order shall serve a sealed copy of the order on the supervisor or interim supervisor.

Application on grounds of unfair prejudice

24. (1) In considering whether to make an order under section 53 of the Ordinance, the Court may take into account the time that has elapsed between the applicant first becoming aware of the circumstances which he claims ground a claim and the date of his application.

(2) If the Court makes an order of revocation or suspension under section 53 of the Ordinance, the person who applied for the order shall serve sealed copies of the order—

(a) on the supervisor; and

(b) on the directors of the company or the administrator or liquidator, depending upon who made the proposal for the arrangement.

(3) If the order includes a direction by the Court under section 52 of the Ordinance for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(4) The directors or the administrator or liquidator, as the case may be, shall—

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the arrangement or who, not having been sent that notice, appear to be affected by the order;

(b) within seven days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within seven days after the making of the order, file a copy of the order with the Registrar.

Supervisor to prepare and send out regular accounts and reports

25. (1) The supervisor shall prepare accounts of his receipts and payments, if any, and reports concerning the progress and efficacy of the arrangement covering the periods specified in sub-rule (2).

(2) The accounts and reports prepared under sub-rule (1) shall cover—

(a) the period of twelve months following the supervisor's appointment;

(b) each subsequent period of twelve months; and

(c) if the supervisor ceases to act as supervisor—

(i) the period from the end of the period covered by the last accounts required to be prepared under this rule, or if he acted as supervisor for less than twelve months from the date of his appointment, to the date of his ceasing to act; and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless prepared in accordance with subparagraph (i).

(3) The supervisor shall, within sixty days of the last day of the period covered by the accounts—

(a) file a copy of the accounts and his report with the Registrar; and

(b) send a copy of the accounts and his report to—

(i) the company;

(ii) each creditor of the company who is bound by the arrangement; and

(iii) each member of the company.

(4) The Court, on the application of the supervisor, may dispense with the sending of the accounts.

PART III

ADMINISTRATION

Interpretation and scope of this Part

26. (1) In this Part, unless otherwise stated—

"pre-administration costs" means any fees charged and expenses incurred by the administrator, or any other insolvency practitioner, before the company entered into administration, but with a view to doing so; and

"statutory objective" means the objective specified in section 57(1) of the Ordinance, including any additional objectives or varied objectives that may be prescribed.

(2) This Part applies to—

(a) an application for the appointment of an administrator;

(b) the appointment of an administrator by the holder of a floating charge under section 59 of the Ordinance; and

(c) administration proceedings, under Part IV of the Ordinance.

Consent of holder of prior floating charge

27. If the holder of a prior floating charge consents to the appointment of an administrator under section 60*(b)* of the Ordinance, the written consent shall be authenticated and dated and shall include—

(a) details of the name, address of registered office and registered number of the company in respect of which the appointment is proposed to be made;

(b) details of the prior floating charge, including the date it was registered and, if applicable, any financial limit and any deeds of priority;

(c) the name and address of the holder of the prior floating charge;

(d) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment;

(e) the date that notice of intention to appoint was given;

(f) the name of the proposed administrator; and

(g) a statement of consent to the proposed appointment.

Notice to Court of appointment

28. (1) The notice of appointment filed with the Court under section 61 of the Ordinance shall identify the administrator and be accompanied by—

(a) a statement by the administrator—

(i) that he consents to the appointment; and

(ii) that in his opinion the purpose of administration is reasonably likely to be achieved; and

(b) either—

(i) evidence that the person making the appointment has given the notice required by section 60(*b)*(i) of the Ordinance; or

(ii) copies of the written consent of all those required to give consent in accordance with section 60*(b)(ii)* of the Ordinance.

(2) For the purpose of the statement under sub-rule (1)(a)(ii), the administrator may rely on information supplied by directors of the company, unless he has reason to doubt its accuracy.

(3) The statutory declaration required by section 61(2) of the Ordinance shall be made not more than five business days before the date that it is filed with the Court.

(4) If the holder of a qualifying floating charge appoints an administrator after receiving notice of an application to Court to appoint an administrator, he shall as soon as reasonably practicable send a copy of the notice of appointment to the person making the application.

(5) The appointor shall notify the administrator, as soon as reasonably practicable, that the notice has been filed, whether under this rule or in approved electronic form.

Appointment taking place outside Court hours

29. (1) If the holder of a qualifying floating charge appoints an administrator when the Court is not open for public business, the notice of appointment may be filed with the Court by sending it to the Court in approved electronic form.

(2) If the notice of appointment is filed in approved electronic form, the appointment shall take effect from the date and time of the fax transmission or the sending of the e-mail.

(3) The appointor shall attach to the notice a statement providing full reasons for the out of hours filing of the notice of appointment, including why it would have been damaging to the company and its creditors not to have so acted.

(4) The copies of the notice shall be sealed by the Court and shall be endorsed with the date and time when, according to the appointor's fax transmission report, or hard copy of the e-mail, the notice was faxed or sent and the date when the notice and accompanying documents were delivered to the Court.

(5) The administrator's appointment shall cease to have effect if the requirements of rule 315(5) are not completed within the time period indicated in that rule, and the administration is terminated.

(6) If any question arises with respect to the date and time that the notice of appointment was filed with the Court, there is a presumption capable of rebuttal that the date and time shown on

the appointor's fax transmission report or hard copy of the e-mail is the date and time at which the notice was filed.

(7) The Court shall issue two of the sealed copies of the notice of appointment to the person making the appointment, who shall, as soon as reasonably practicable, send one of the copies to the administrator.

Application for administration order

30. Application for an administration order is made by filing at Court—

(a) an application complying with rule 31; and

(b) an affidavit in support of the application complying with rule 32.

Form of application

31. (1) An application for an administration order shall—

(a) unless the application is made by the holder of a qualifying floating charge in accordance with section 66 of the Ordinance, state the applicant's belief that the company is or is likely to become insolvent;

(b) specify the name and address of the insolvency practitioner the applicant proposes for appointment as administrator; and

(c) state the applicant's address for service which, in the case of an application made by the company itself or the directors, shall, in the absence of special reasons to the contrary, be the registered office of the company.

(2) An application for an administration order made by the directors of a company shall, from the filing of the application, be treated as the application of the company.

(3) An application for an administration order made by two or more creditors shall name all the creditors as applicants but, from the filing of the application, it is to be treated as the application of the first named creditor applying on behalf of himself and the other creditors.

(4) An application made by one or more creditors—

(a) if made by a single creditor, shall state the creditor's name and address as the address for service;

(b) if made by more than one creditor, shall state the first-named creditor's name and address as the address for service.

(5) An application for an administration order shall have attached to it a written statement signed by each proposed administrator—

(a) that he is an eligible insolvency practitioner in relation to the company and the appointment;

(b) providing details of any prior professional relationship that he has had with the company; and

(c) that in his opinion, there is a reasonable prospect that the statutory objective of administration will be achieved.

Affidavit in support

32. (1) The affidavit in support of an application for an administration order shall—

(a) unless the application is made by the holder of a qualifying floating charge in accordance with section 66 of the Ordinance, state the deponent's belief that the company is or is likely to become insolvent;

(b) to the best of the deponent's knowledge and belief provide details of—

(i) the financial position of the company, specifying its assets and liabilities;

(ii) any security interest held by creditors of the company, specifying whether the holder of any security interest has the power to appoint an administrative receiver or an administrator and, if so, whether an administrative receiver has been appointed;

(iii) any insolvency proceedings that have commenced in relation to the company and whether an application has been made for the appointment of a liquidator; and

(c) set out any other facts or matters that, in the opinion of the applicant, will or may assist the Court in deciding whether to make an administration order in respect of the company.

(2) If an application for an administration order is made by the liquidator of a company under section 64 of the Ordinance, the affidavit is support of the application shall also contain—

(a) full details of the liquidation, including the name and address of the liquidator, the date upon which the liquidation commenced and whether it was commenced on an appointment by the Court or by the members;

(b) the reasons why the liquidator considers that an administration order should be made; and

(c) all other matters that the liquidator considers would assist the Court in determining the application and in making provision for the matters specified in section 68(4)*(a)* and *(b)* of the Ordinance.

(3) If the application is made by the holder of a qualifying floating charge in accordance with section 66 of the Ordinance, the affidavit shall set out the basis on which the applicant is entitled to make the application.

(4) An affidavit under sub-rule (1) shall be sworn—

(a) in the case of an application made by a company or by the directors of the company, by a director or the secretary of the company, on behalf of the company or the directors;

(b) in the case of an application made by a creditor, by the creditor or a person authorised by the creditor, or all the creditors;

(c) in the case of an application made by the supervisor of an arrangement, by the supervisor or a person authorised by him;

(d) in the case of an application made by the liquidator, by the liquidator or a person authorised by him; and

(e) in the case of an application made by the Commission, by an authorised officer of the Commission.

Subsequent application for appointment of liquidator

33. If, after the filing of an application in respect of a company, the applicant becomes aware that an application for the appointment of a liquidator of the company has been made, he shall notify the Court in writing.

Service of application

34. (1) Service shall be effected on each person specified in section 64(2) of the Ordinance by serving the person with a sealed copy of the application for an administration order, the statement of the insolvency practitioner proposed for appointment as administrator attached to the application and the affidavit in support of the application, including the documents exhibited to the affidavit.

(2) For the purposes of section 64(2)*(g)* of the Ordinance, the following persons shall also be served with a copy of an application for an administration order—

(a) the insolvency practitioner proposed as administrator; and

(b) if a supervisor of an arrangement has been appointed under Part III of the Ordinance, on the supervisor.

Sealed copies of application to be sent to other persons

35. A sealed copy of the application for an administration order shall be sent to—

(a) any person who, to the applicant's knowledge, is charged with an execution or other legal process against the company or its assets; and

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets.

Hearing of application

36. The following are entitled to appear or be represented at the hearing of an application for an administration order—

(a) the applicant;

(b) a person entitled under the Ordinance or the Rules to be served with a copy of the application;

(c) the person proposed to be appointed administrator; and

(d) with the leave of the Court, any other person who appears to the Court to have an interest in the application.

Administration order

37. (1) If the Court makes an administration order, the costs of the applicant and of any person whose costs are allowed by the Court, are payable as an expense of the administration.

(2) If the Court makes an administration order on the application of the liquidator of a company, it shall—

(a) if the liquidator was appointed by the members of the company under section 159 of the Ordinance, provide for the liquidator's removal from office;

(b) provide for the payment of the expenses of the liquidator;

(c) make provision regarding any indemnity given to the liquidator;

(d) make provision regarding the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator; and

(e) provide details concerning the release of the liquidator,

and the Court may make such other order as it considers appropriate.

Notice of administration order

38. (1) If an administration order is made, the Court shall, as soon as reasonably practicable, send two sealed copies of the order to the applicant.

(2) The applicant shall, as soon as reasonably practicable, send a sealed copy of the administration order to the person appointed as administrator.

(3) For the purposes of section 62(2)*(a)* of the Ordinance, the following persons shall be given notice of the appointment of an administrator—

(a) any person who, to the applicant's knowledge, is charged with an execution or other legal process against the company or its assets;

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets;

(c) if a supervisor of an arrangement has been appointed under Part III of the Ordinance, the supervisor; and

(d) if the company is or has been a licensee, the Commission.

(4) The advertisement of an administration order, as required by rule 306(1), shall include the following—

(a) a statement that an administrator has been appointed;

(b) the date of the appointment; and

(c) a statement of the nature of the business of the company.

Proposal

39. The administrator's proposal may include—

(a) a proposal for an arrangement under Part III of the Ordinance; or

(b) a proposal for an arrangement under Part XII of the Companies Ordinance.

Matters to be set out in report on proposals

40. (1) The report of the administrator on his proposals prepared under section 91(1)*(a)* of the Ordinance shall include the following—

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

(b) details relating to his appointment as administrator, including the date of his appointment and the person who applied for his appointment and details of any joint administrators;

(c) the names of the directors and any secretary of the company and details of any shareholdings they may have;

(d) an account of the circumstances giving rise to the application for an administration order;

(e) if a statement of affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;

(f) if an order of limited disclosure has been made under section 249 of the Ordinance, a statement of that fact, as well as—

(i) details of the relevant person who provided the statement of affairs;

(ii) the date of the order of limited disclosure, and

(iii) the details or a summary of the details that are not subject to that order;

(g) if a full statement of affairs is not provided, the names, addresses and debts of the creditors of the company, including details of any security held;

(h) if no statement of affairs has been submitted, to the best of his knowledge and belief—

(i) details of the financial position of the company at the latest practicable date, which shall, unless the Court otherwise orders, be a date not earlier than that of the administration order;

(ii) a list of the company's creditors, including any security held; and

(iii) an explanation as to why no statement of affairs has been submitted;

(i) the basis on which it is proposed that the administrator's remuneration should be fixed;

(j) a statement of any pre-administration costs;

(k) a statement of how it is envisaged that the objective of the administration will be achieved and how it is proposed that the administration will terminate;

(l) if the administrator will not call a meeting of creditors, a statement to that effect together with an explanation of how section 91(3) of the Ordinance applies;

(m) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator's appointment, been managed and financed, including, if any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and

(ii) will, if the administrator's proposals are approved, continue to be managed and financed; and

(n) such other information, if any, that the administrator considers necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) If applicable, the report shall explain why—

(a) the administrator considers that it is not reasonably practicable to achieve the objective specified in section 57(1)*(a)* or *(b)* of the Ordinance;

(b) the objective is inconsistent with any additional or varied objectives that may be applicable to the company; and

(c) the proposal does not unnecessarily harm the interests of the creditors as a whole.

(3) The proposals of an administrator, including the proposals as amended or modified, shall not, except with the written agreement of the secured creditor or the preferential creditor concerned—

(a) affect the right of a secured creditor of the company to enforce his security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than he would receive in a liquidation or bankruptcy of the debtor had it commenced at the time of approval of the arrangement.

(4) The Court shall not discharge an administration order under section 71 of the Ordinance unless it is satisfied that the administrator has sent a report to creditors under section 91(1) of the Ordinance or under rule 41(3).

Other matters concerning proposal

41. (1) If the administrator has not called an initial meeting of creditors, in reliance on section 91(3) of the Ordinance, the administrators' proposal will, if no meeting has been requisitioned under section 91(4) of the Ordinance within the period set out in rule 46(1), be deemed to have been approved by the creditors.

(2) If proposals are deemed under sub-rule (1) to have been approved, the administrator must, as soon as reasonably practicable after expiry of the period set out in rule 46(1), give notice of the date on which they were deemed to have been approved to the Registrar, the Court and the creditors and a copy of the proposals must be attached to the notice given to the Court and to creditors who have not previously received them.

(3) If the administrator intends to apply to the Court for the administration order to be discharged before he has sent a report to creditors, he shall, at least ten days before the hearing of the application, send to all creditors of the company a report containing the information required by rule 40(1).

Advertisement of availability of proposal for members

42. (1) The administrator, instead of sending a copy of a notice calling a meeting of creditors and a copy of his report to members under section 91(1)*(d)* of the Ordinance or rule 47(1)*(d)*, may advertise a notice—

(a) specifying the date and venue of the creditors' meeting; and

(b) undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(2) Rule 306(1) applies to an advertisement under sub-rule (1) with the substitution in rule 306(1)*(b)* of "members" for "creditors".

(3) A notice under subrule (1) shall be advertised no later than fourteen days prior to the date set for the meeting of creditors.

Order for limited disclosure

43. (1) If the administrator thinks that it would prejudice the conduct of the administration for any of the matters specified in rule 40(1)*(g)* and *(h)* to be disclosed, the administrator may apply to the Court for an order of limited disclosure in respect of any specified part of the report.

(2) If the administrator makes an application under sub-rule (1), section 249 of the Ordinance and rules 134 and 135 apply as if the report was a statement of affairs, with necessary modifications.

Statement of affairs

44. If the administrator receives a statement of affairs after he has sent the report on his proposals to creditors, he shall, as soon as reasonably practicable after receiving the statement of affairs, send a copy of the statement of affairs, or a summary of the statement of affairs, to the creditors.

Minutes of creditors' meeting

45. In administration proceedings, the minutes required to be kept under rule 285 shall be entered in the company's minute book.

Requisition of meeting by creditors under section 91(4) of the Ordinance

46. (1) A request to the administrator of a company to requisition a meeting under section 91(4) of the Ordinance shall be delivered to the administrator within fourteen days of the date when the administrator sent his report to the creditors under section 91(1)*(c)*.

(2) Subject to sub-rule (1), rule 273 applies to the requisition of a creditors' meeting under section 91(4).

Modification of proposals

47. (1) If proposals have been approved by the creditors and the administrator subsequently considers that they should be substantially modified, he shall—

(a) prepare a report setting out his proposed modifications;

(b) call a meeting of creditors for the purpose of considering the report;

(c) send a copy of his report to each creditor together with the notice of the meeting;

(d) send a copy of the notice convening the meeting together with his report to each member of the company;

(e) file a copy of the notice calling the meeting together with his report with the Registrar; and

(f) cause the creditors' meeting to be advertised.

(2) The report of the administrator on his proposed modifications to approved proposals prepared under sub-rule (1) shall include the following—

(a) the matters specified in rule 40(1)*(a),(b)* and *(c)*;

(b) a summary of the initial proposals and the reasons for proposing a modification;

(c) details of the proposed modification including details of the administrator's assessment of the likely impact of the proposed modification upon creditors generally or upon each class of creditors;

(d) if a proposed modification relates to the termination of an administration, details of how it is proposed that the administration should terminate; and

(e) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed modification.

(3) At the creditors' meeting referred to in sub-rule (1), the creditors may resolve to—

(a) approve the administrator's proposed modifications to the proposals, with or without amendment;

(b) reject the proposed modifications; or

(c) adjourn the meeting.

(4) Section 93(2) of the Ordinance applies to the creditors' approval of the administrator's proposed modifications to the proposal under this section and if the creditors wish to amend the administrator's proposed modifications, section 94 of the Ordinance applies.

(5) The administrator shall, within fourteen days of the date of the meeting held under this rule—

(a) report the result of the meeting to the Court and file a copy of the report with the Registrar; and

(b) send a notice setting out the result of the meeting to every creditor.

(6) The report and notice required under sub-rule (5) shall have annexed to it details of—

(a) the modifications to the proposal considered at the meeting and of any amendments to those modified proposals that were considered; and

(b) such proposals and amendments as were approved.

Creditors' request for information

48. (1) If—

(a) within twenty-one days of receipt of a progress report under section 97(1)*(b)* of the Ordinance—

(i) a secured creditor; or

(ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors, including the creditor in question; or

(b) with the permission of the Court upon an application made within that period of twenty-one days, any unsecured creditor,

makes a request in writing to the administrator for further information about remuneration or expenses, other than pre-administration costs set out in the administrator's report on proposals, the administrator must, within fourteen days of receipt of the request, comply with sub-rule (2).

(2) The administrator complies with this sub-rule by either—

(a) providing all of the information asked for; or

(b) so far as the administrator considers that—

(i) the time or cost of preparation of the information would be excessive; or

(ii) disclosure of the information would be prejudicial to the conduct of the administration; or

(iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor, who need not be the same as the creditor who requested further information under sub-rule (1), may apply to the Court within twenty-one days of—

(a) the giving by the administrator of reasons for not providing all of the information asked for; or

(b) the expiry of the fourteen days provided for in sub-rule (1), and the Court may make such order as it thinks just.

Creditors' committee

49. (1) If there is a change in the membership of a creditors' committee appointed in an administration, the administrator shall file with the Registrar a copy of the notice filed with the Court under these Rules.

(2) In the case of a company in administration, a record of each resolution of the creditors' committee shall be entered into the company's minute book.

Resignation of administrator

50. (1) The grounds upon which an administrator may resign are—

(a) ill health;

(b) because he intends ceasing to practice as an insolvency practitioner; or

(c) because there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator shall give seven days' notice of his intention to resign or of an application to the Court under section 98(2)*(a)* of the Ordinance for leave to resign—

(a) if there is a continuing administrator of the company, to him;

(b) if there is no continuing administrator, to the creditors' committee, if any; or

(c) if there is no administrator or creditors' committee, to the company and its creditors.

(3) An administrator who resigns shall, within five days of his resignation, file a notice of his resignation with the Court and the Registrar and send a copy of the notice to each person to whom a notice of his intention to resign was given under sub-rule (2).

(4) If an administrator resigns under section 98(2)*(b)* of the Ordinance (ceasing to be an eligible insolvency practitioner), he shall—

(a) forthwith file a notice of his resignation, specifying the reason for his resignation, with the Court and the Registrar; and

(b) within five days of his resignation, send a copy of the notice filed with the Court to the persons specified in sub-rule (2).

Death of administrator

51. (1) If the administrator dies, his personal representative shall give notice of his death to the Court and the Registrar, specifying the date of his death, unless notice has already been given to the Court and the Registrar under sub-rules (2) or (3).

(2) If an administrator who dies was a partner in a firm, notice of his death may be given to the Court and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of an administrator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

Application by creditor to remove administrator

52. (1) An application by a creditor of a company to remove an administrator from office shall state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application shall be served on the administrator, the person who applied for the administration order, the creditors' committee (if any), any joint administrator and, if there is neither a creditors' committee or a joint administrator, to the company and each of the creditors of the company not less than five business days before the date fixed for the application to be heard.

(3) If a Court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the administrator.

(4) The applicant shall, within five business days of the order being made, send a copy of the order to the Registrar and to each person to whom notice of the application was sent.

Application to replace administrator

53. (1) An application to the Court under section 99 of the Ordinance to appoint a replacement administrator—

(a) shall specify the grounds of the application; and

(b) shall be served on the person who applied for the administration order and on any person who was entitled to be served with notice of the application for the administration order.

(2) An application under section 99 of the Ordinance shall be supported by an affidavit deposing as to the matters set out in the application and as to any other matters that may assist the Court in determining the application.

Application to appoint joint administrator

54. (1) Application may be made to the Court to appoint a joint administrator.

(2) An application under sub-rule (1) and any order made by the Court shall, for the purposes of form of application, notice, hearing and advertisement be treated as an application under section 99 of the Ordinance.

Termination of administration

55. (1) If the Court has made an administration order in respect of a company, the administration terminates on the discharge of the administration order.

(2) If an administrator is appointed by the holder of a floating charge under section 59 of the Ordinance, the administration terminates—

(a) if rule 29(5) applies, at the time specified in that rule;

(b) if the Court by order discharges the appointment of the administrator; or

(c) if paragraphs *(a)* and *(b)* do not apply, on the filing of a notice of completion with the Court in accordance with rule 58.

Discharge of administration order

56. (1) Together with an application for an order varying or discharging the administration order under section 71(2)*(a)* of the Ordinance, the administrator shall file with the Court a report—

(a) indicating the reasons why the administrator considers that the administration order should be varied or discharged;

(b) if the application is for the discharge of the order, setting out his opinion, with reasons, as to whether the Court should make an order under section 72(1)*(a)* or *(b)* of the Ordinance or, if not, his opinion as to the future prospects for the company;

(c) if he is of the opinion that the Court should make an order under section 72(1)*(a)* of the Ordinance, whether he seeks appointment, or would consent to being appointed, as liquidator.

(2) The administrator shall send the company and each creditor of the company a copy of an application under section 71(2)*(a)* of the Ordinance together with his report at least seven days before the date fixed for hearing of the application.

(3) Together with an application for an order varying or discharging the administration order under section 71(2)*(b)* of the Ordinance, the administrator shall file with the Court a report—

(a) indicating, with reasons, whether he agrees with the creditors' requirement that he make the application;

(b) indicating, with reasons, whether or not he considers that the administration order should be varied or discharged;

(c) if he considers that the administration order should be discharged, setting out his opinion, with reasons, as to whether the Court should make an order under section 72(1)*(a)* or *(b)* of the Ordinance or, if not, his opinion as to the future prospects for the company;

(d) if he is of the opinion that the Court should make an order under section 72(1)*(a)* of the Ordinance, whether he seeks appointment, or would consent to being appointed, as liquidator; and

(e) if he has indicated that he would seek appointment, or would consent to being appointed, as liquidator, the date upon which he so notified creditors, either in writing or at a meeting of creditors and so advised them.

(4) A report filed under sub-rules (1) or (3) shall have the most recent accounts and report prepared by the administrator under section 97 of the Ordinance annexed to it and a report filed under sub-rule (3) shall also have annexed to it the resolution of the creditors requiring him to make the application.

(5) If, in a report filed under sub-rule (1) or (3), the administrator indicates that he seeks appointment, or would consent to being appointed, as liquidator, he shall, at least seven days prior to the date fixed for the hearing of the application to discharge the administration order, notify the creditors of this and that they may send him written notice of their support or objection to his appointment as liquidator which he will bring to the attention of the Court.

(6) The administrator may comply with sub-rule (5)—

(a) by including the notification in his report prepared under sub-rule (1);

(b) by notifying creditors at a meeting of creditors; or

(c) by separate written notice.

(7) If an administration order is discharged or varied, the administrator or if the order is discharged the person who, immediately before the discharge, was the administrator of the company, shall within fourteen days of the date of the order, send a notice of the order to the company and to each creditor of the company.

(8) A notice filed with the Registrar under section 73(1) of the Ordinance and sent to the company and creditors under sub-rule (7) shall—

(a) state whether the Court appointed a liquidator or dissolved the company; and

(b) be accompanied by the administrator's final progress report.

Application to court by administrator appointed by holder of floating charge

57. (1) Application to the Court for an order discharging his appointment as administrator—

(a) may be made at any time by an administrator appointed by the holder of a floating charge; and

(b) shall be made by such an administrator if he is required to do so by a meeting of creditors summoned for the purpose.

(2) An application under sub-rule (1) shall have attached to it a progress report for the period since the last progress report prepared under section 97(1)*(b)* of the Ordinance, if any, or the date the company entered administration and a statement indicating what the administrator thinks should be the next steps for the company, if applicable.

(3) If the administrator applies to the Court because the creditors' meeting has required him to, he shall also attach a statement to the application in which he shall indicate, giving reasons, whether or not he agrees with the creditors' requirement to him to make the application.

(4) When the administrator applies other than at the request of a creditors' meeting, he shall—

(a) give notice in writing to the applicant for the administration order under which he was appointed, or the person by whom he was appointed and the creditors of his intention to apply to court at least five business days before the date that he intends to makes his application; and

(b) attach to his application to the Court, a statement that he has notified the creditors, and copies of any response from creditors to that notification.

(5) On an application under this rule, the Court may discharge the appointment of the administrator.

(6) If the Court makes an order under this rule, the administration is terminated with effect from the time of the administrator's discharge.

Termination of administration: administrator appointed by holder of floating charge

58. (1) If an administrator appointed by the holder of a floating charge considers that the objective of administration has been sufficiently achieved, he shall file a notice of completion with the Registrar and two copies of the notice with the Court.

(2) The notices filed with the Court shall each have attached to it the final progress report required under section 97(2)*(c)* of the Ordinance.

(3) The Court shall endorse each copy with the date and time of filing.

(4) The administrator's appointment shall cease to have effect and the administration is terminated on the date and time of filing endorsed on the notice by the Court.

(5) The administrator shall, as soon as reasonably practicable, and within five business days, send a copy of the notice of completion of the administration, and the accompanying report, to every creditor of the company, to all those persons, except the Registrar, who were notified of his appointment and to the company.

(6) If the Court terminates an administration under this rule, the former administrator shall, within fourteen days of the date of the order—

(a) file a notice of the termination with the Registrar, accompanied by his final progress report; and

(b) send a notice of the termination, accompanied by his final progress report, to—

(i) the company;

(ii) each creditor of the company; and

(iii) all other persons who received notice of the administrator's appointment.

Final report

59. The final report prepared by an administrator under section 97(2)*(c)* of the Ordinance shall include a summary of—

(a) the administrator's proposals;

(b) any modifications to those proposals;

(c) the steps taken during the administration; and

(d) the outcome of the administration.

Administrator's duties on vacating office

60. If a person, for whatever reason, ceases to hold office as administrator, he shall as soon as reasonably practicable deliver up to the person succeeding him as administrator—

(a) the assets of the company, after deduction of any expenses properly incurred;

(b) the records of, and relating to, the administration; and

(c) the company's books, papers and other records.

Distributions

61. If the administrator makes, or proposes to make, a distribution to creditors in accordance with the power granted under section 83 of the Ordinance, whether with or without the leave of the Court, the provisions of the Rules applicable to distributions in a liquidation apply subject to such modifications as are appropriate.

Expenses of administration

62. (1) Subject to sub-rule (2), the expenses of an administration are payable in the following order of priority—

(a) expenses properly incurred by the administrator in performing his functions;

(b) the cost of any security provided by the administrator in accordance with the Ordinance or the Rules;

(c) if an administration order was made, the costs of the applicant for the administration order and any person appearing on the hearing of the application whose costs are allowed by the Court;

(d) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or statement of concurrence;

(e) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;

(f) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under the Rules;

(g) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Ordinance or the Rules;

(h) the remuneration of the administrator.

(2) If the assets of a company are insufficient to satisfy the liabilities specified in sub-rule (1), the Court may make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as it considers appropriate.

Pre-administration costs

63. If the administrator has included a statement of pre-administration costs in the report on proposals as required by rule 40, sections 462 to 465 of the Ordinance apply, with suitable modifications, as if the pre-administration costs were expenses of the administration.

PART IV

RECEIVERSHIP

Application

64. The rules in this Part apply when Part V of the Ordinance applies to a receiver of a company or to the appointment of a receiver of a company.

Persons not eligible to be appointed or act as receiver

65. For the purposes of section 109(1)*(i)* of the Ordinance, the following persons are not eligible to be appointed or to act as a receiver—

(a) a person who has not attained the age of eighteen years;

(b) a person who is certified to be of unsound mind under any law in force in any country.

Notice and advertisement of appointment

66. (1) A receiver shall within three business days of his appointment—

(a) send a notice of his appointment to the company; and

(b) file a notice of his appointment—

(i) with the Registrar; and

(ii) if the company is or at any time has been a licensee, with the Commission.

(2) The notice of appointment shall state—

(a) the registered name of the company, as at the date of the appointment;

(b) any name with which the company has been registered in the two months preceding the date of his appointment;

(c) any name under which the company has traded at any time in those two months, if substantially different from its registered name;

(d) the receiver's name and address, and the date of his appointment;

(e) the name of the person by whom the appointment was made;

(f) if the receiver is appointed to act jointly with an existing receiver or in place of a receiver who has vacated office, that fact;

(g) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;

(h) a brief description of the assets of the company in respect of which the receiver has been appointed; and

(i) a brief description of the nature of the business of the company.

(3) In addition to complying with sub-rule (1), an administrative receiver shall—

(a) subject to sub-rule (4), within five business days after being appointed, cause a notice of his appointment to be advertised; and

(b) within twenty-eight days after being appointed, send a notice of his appointment to all creditors of the company in receivership.

(4) Sub-rule (3)*(a)* does not apply to a receiver appointed—

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act,

provided that the existing receiver or administrative receiver who has died or ceased to act, advertised, and sent notice to all creditors of, his appointment as administrative receiver.

(5) The advertisement by an administrative receiver of his appointment shall state the matters specified in sub-rule (1).

(6) A receiver who contravenes sub-rule (1), and an administrative receiver who contravenes sub-rule (3), commits an offence and is liable—

(a) on summary conviction to a fine of $10,000;

(b) on conviction on indictment to a fine of $25,000.

Notice of vacation of office

67. An administrative receiver who, under section 126(1) of the Ordinance, is required to give notice of his resignation shall, if there is no creditors' committee, also give notice to the creditors of the company.

Report and meeting of unsecured creditors

68. (1) If, when he files his report with the Registrar under section 143(1) of the Ordinance, the administrative receiver has not received a statement of affairs, he shall in his report state that fact and state, to the best of his knowledge and belief, the reasons therefore.

(2) The notice calling a meeting of unsecured creditors under section 143(3)*(c)* of the Ordinance shall state that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting.

Application to dispose of charged assets

69. (1) This rule applies if the administrative receiver of a company applies to the Court under section 139 of the Ordinance for authority to dispose of assets of the company subject to a security interest.

(2) The administrative receiver shall forthwith give notice of the hearing of an application under section 139 of the Ordinance to the person who is the holder of the security interest.

(3) If an order is made under section 139 of the Ordinance, the administrative receiver shall forthwith serve a sealed copy of the order on the holder of the security interest.

Death of administrative receiver

70. If an administrative receiver dies, the person who appointed him shall, forthwith on his becoming aware of the death, give notice of it to—

(a) the Registrar;

(b) the company or, if it is in liquidation, the liquidator; and

(c) in any case, to the members of the creditors' committee, if any.

PART V

PROVISIONS APPLICABLE TO THE LIQUIDATION OF COMPANIES AND TO THE BANKRUPTCY OF INDIVIDUALS

Claim in currency other than dollars

71. (1) The rate of exchange used for the purposes of converting a liability into dollars in accordance with section 150 of the Ordinance is the closing mid-point rate published in the Financial Times (US Edition) for the relevant date.

(2) In the absence of a published rate as referred to in sub-rule (1), the rate used shall be determined by the Court.

Discounts

72. Any trade and other discounts which would have been available to the debtor but for the insolvency proceeding, except any discount for immediate, early or cash settlement, shall be deducted from a creditor's claim.

Discount for debt payable after commencement date

73. (1) This rule provides for the discount to be applied to a claim based on a liability that, at the commencement of the insolvency proceeding, was not payable by the company until after the commencement of the insolvency proceeding.

(2) The claim shall be reduced by a percentage calculated as follows—

$$\frac{I \times M}{12}$$

Where—

(a) I = 5%; and

(b) M is the number of months, expressed if need be as, or as including, fractions of a month, between the commencement of the liquidation and the date when the liability would otherwise have been due for payment.

Statutory demand

74. (1) The minimum sum for which a statutory demand may be issued is $750.

(2) If the amount claimed in a statutory demand made against a person includes—

(a) a charge by way of interest not previously notified to the person as included in his liability; or

(b) any other charge accruing from time to time,

the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(3) If sub-rule (2) applies, the amount claimed shall be limited to that amount that has accrued due at the date of the demand.

(4) A statutory demand shall include the name, address and the contact details, if any, of an individual or individuals with whom the debtor may communicate with a view to securing or compounding for the debt to the satisfaction of the creditor.

Service on individual

75. (1) A creditor shall make all reasonable attempts to effect personal service of a statutory demand on an individual.

(2) If a creditor is not able to effect personal service, a statutory demand may be served on an individual by leaving the demand addressed to the individual at such of the places specified in sub-rule (3) as would be most likely to bring the demand to his notice.

(3) The places referred to in sub-rule (2) are his last known place of residence, place of business or place of employment.

(4) If the creditor has no knowledge of the last known place of residence, place of business or place of employment of the individual, he may serve the statutory demand by advertisement in one or more local newspapers.

(5) When service is effected in accordance with sub-rule (4), the period of time specified in section 155(3)*(d)* of the Ordinance for compliance with the demand shall run from the date of publication of the advertisement.

Service out of jurisdiction

76. If the Court permits a statutory demand is to be served outside the Islands, the period of time for compliance with the demand is twenty-eight days or such longer period of time as the Court may order.

Setting aside of statutory demand

77. (1) An application to set aside a statutory demand shall be supported by an affidavit—

(a) specifying the date upon which the debtor was served with the statutory demand; and

(b) stating the grounds upon which he claims that the statutory demand should be set aside.

(2) A copy of the statutory demand shall be exhibited to the affidavit in support.

PART VI

LIQUIDATION

Scope of this Part

78. (1) Subject to any specific provisions in the Ordinance or the Rules relating to unregistered companies, the rules in this Part apply, to the extent provided, to—

(a) an application to the Court to appoint a liquidator of a company and an unregistered company;

(b) the appointment of a liquidator of a company, whether by the members or the Court or the appointment of a liquidator of an unregistered company by the Court; and

(c) the liquidation of a company and an unregistered company.

(2) If a liquidator is appointed in respect of a licensee, the liquidator shall send to the Commission a copy of every notice or other document—

(a) required to be sent to creditors of the licensee; or

(b) filed with the Court.

Appointment of liquidator by members

79. (1) The chairman of a meeting of members that, by a qualifying resolution, appoints a liquidator under section 159(1) of the Ordinance shall, as soon as practicable, provide the liquidator with—

(a) a copy of the resolution by which he was appointed; and

(b) a certificate of his appointment, signed by the chairman.

(2) The provision to the liquidator of the documents specified in sub-rule (1) is deemed notice to the liquidator for the purposes of section 160(1) of the Ordinance.

(3) This rule does not apply to an unregistered company.

Application to Court for appointment of liquidator

80. (1) Application for the appointment of a liquidator by the Court is made by filing at Court an application complying with sub-rule (2) together with an affidavit in support of the application complying with rule 81.

(2) An application under sub-rule (1) shall state—

(a) the grounds upon which the appointment is sought; and

(b) whether the applicant proposes an eligible insolvency practitioner as liquidator and, if he does, it shall—

(i) specify the name and address of the person proposed; and

(ii) state that, to the best of the applicant's knowledge and belief, the person specified is eligible to act as an insolvency practitioner in relation to the company.

(3) If a company is in liquidation, no application for the appointment of a liquidator may be made to the Court, whether the liquidator was appointed by the members or by the Court.

Affidavit in support

81. (1) An application for the appointment of a liquidator shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made—

(a) by the applicant;

(b) if the applicant is a corporate body, by an officer who has been concerned with the matters stated in the application;

(c) by the legal practitioner acting for the applicant; or

(d) by a responsible person who is authorised to make the affidavit and who has the requisite knowledge of the matters sworn in the affidavit.

(4) A supporting affidavit is *prima facie* evidence of the statements in the application to which it relates.

(5) If an applicant is making applications to appoint a liquidator for more than one company, a separate affidavit shall be filed in respect of each application.

(6) If the applicant proposes an eligible insolvency practitioner as liquidator of the company, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application shall be exhibited to the affidavit in support of an application for the appointment of a liquidator.

Service of application on company

82. (1) Unless the company is the applicant, a sealed copy of the application for the appointment of a liquidator, together with the supporting affidavit, shall be served on the company not more than fourteen days after the application has been filed.

(2) Service of the application on the company shall be verified by an affidavit of service complying with the Court Rules.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

Copies of application to be sent to other persons

83. (1) A sealed copy of an application for the appointment of a liquidator shall be sent—

(a) if the company is in administration, to its administrator;

(b) if an administrative receiver has been appointed in respect of the assets of the company, to him;

(c) if a creditors' arrangement has been proposed or accepted, to the interim supervisor or supervisor appointed in respect of the arrangement or the proposed arrangement, as the case may be;

(d) if the company is, or at any time has been, a licensee, to the Commission, unless the Commission is the applicant,

within the time limits specified in sub-rule (2).

(2) Documents referred to in sub-rule (1) shall be sent—

(a) to the persons specified in sub-rule (1)*(a)* to *(c)*—

(i) no earlier than the day after service of the application on the company; and

(ii) no later than four days after service of the application on the company; and

(b) to the Commission under paragraph *(d)*, as soon as reasonably practicable after the application has been filed but, in any event, no later than 11 am on the day immediately after the date on which the application was filed.

Application seeking appointment of supervisor as liquidator

84. (1) This rule applies if, in an application for the appointment of a liquidator, the applicant proposes as liquidator the supervisor of an arrangement in place in respect of the company.

(2) Within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the company—

(a) stating that an application has been made for the appointment of a liquidator of the company and that it is proposed that he be appointed liquidator; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Persons entitled to a copy of the application

85. An applicant for the appointment of a liquidator shall, on receiving—

(a) a request from any director, member or creditor of the company for a copy of the application; and

(b) payment of a fee of $2.00,

provide that person with a copy of the application as soon as is reasonably practicable to do so.

Advertisement of application

86. The advertisement of an application to appoint a liquidator shall state—

(a) the name of the company in respect of which the appointment is sought and the address of its registered office or, in the case of an unregistered company, the address at which the application was served;

(b) the name and address of the applicant;

(c) the date on which the application was filed;

(d) the venue fixed for the hearing of the application;

(e) the name and address of the legal practitioner acting for the applicant; and

(f) that any person intending to appear at the hearing of the application, whether to support or oppose the application, shall give notice of his intention in accordance with rule 87.

Notice of intention to appear

87. (1) A person who intends to appear on the hearing of an application to appoint a liquidator, other than the company itself, shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify—

(a) the name and address of the person giving notice and his contact details, if any;

(b) whether it is his intention to support or oppose the application; and

(c) if he is a creditor, the amount of his debt or if he is not a creditor the grounds upon which he supports or opposes the application.

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 4 pm on the business day before the date fixed for the hearing of the application, or if the hearing has been adjourned, the adjourned hearing.

(4) A person who fails to comply with this rule may appear on the hearing of the application only with the leave of the Court.

List of appearances

88. (1) An applicant for the appointment of a liquidator shall prepare a list of the persons, if any, who have sent him a notice of intention to appear in accordance with rule 87, specifying, in respect of each person—

(a) his name and address;

(b) his legal practitioner, if known; and

(c) whether he intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule 87, the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

Affidavit in opposition

89. If a company intends to oppose an application for the appointment of a liquidator it shall, not less than seven days before the date fixed for the hearing of the application, file with the Court and serve on the applicant—

(a) a notice setting out the grounds on which it opposes the application; and

(b) an affidavit verifying the matters stated in the notice.

Leave to withdraw application

90. (1) The Court may, on the application of the person applying for the appointment of a liquidator in respect of a company, grant that person leave to withdraw the application in accordance with section 162(5) of the Ordinance if it is satisfied that—

(a) the application has not been advertised;

(b) no notices of intention to appear have been received by the applicant under rule 87; and

(c) the company consents to the application being withdrawn.

(2) An application under sub-rule (1) shall be made *ex parte* at least five days before the date fixed for the hearing of the application.

Appointment of Official Assignee as liquidator

91. The Court may appoint the Official Assignee as liquidator of a company notwithstanding that—

(a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as liquidator under section 162(4) of the Ordinance;

(b) the Official Assignee has not consented to act as liquidator; and

(c) the Official Assignee has not been given notice of the application.

Notice of order

92. The Court shall, forthwith on making an order appointing a liquidator, give notice to the liquidator of his appointment and send a sealed copy of the order to him as soon as is practicable.

Application by member of company

93. (1) Except as provided in this rule or by the Court, this Part does not apply to an application for the appointment of a liquidator made by a member of the company ("a member's application").

(2) A member's application shall be made in accordance with rule 80 and shall be supported by an affidavit complying with rule 81.

(3) A sealed copy of the application and the affidavit in support shall be served on the company not less than fourteen days before the date fixed for the hearing of the application.

(4) A member's application shall not, except as directed by the Court, be served on any person other than the company or be advertised.

(5) At the first hearing of the application, the Court shall give such directions concerning the procedures for or in connection with the determination of the application as it considers appropriate.

(6) Without limiting sub-rule (5), the Court shall give directions concerning—

(a) service of the application on, or giving notice of the application to, persons other than the company;

(b) whether the application should be advertised and, if so, the manner of its advertisement;

(c) whether particulars of claim, defence and reply to defence are to be delivered; and

(d) the manner in which evidence is to be adduced at the hearing of the application including the matters to be dealt with in evidence.

(7) Rules 87, 88, 90, 91 and 92 apply to a member's application with such modifications as are necessary.

Application for appointment of provisional liquidator

94. (1) An application for the appointment of a provisional liquidator of a company shall propose an eligible insolvency practitioner or the Official Assignee for appointment as provisional liquidator.

(2) If the Official Assignee is proposed for appointment as provisional liquidator, he shall be given sufficient notice of the hearing to enable him to attend the hearing.

(3) An application for the appointment of a provisional liquidator shall be supported by an affidavit stating—

(a) the grounds upon which the application is being made;

(b) that the proposed appointee has consented to act and, to the best of the applicant's belief is eligible to act as provisional liquidator of the company;

(c) whether, to the applicant's knowledge—

(i) there has been proposed or is in force for the company a creditor's arrangement under Part III of the Ordinance; or

(ii) an administrator or administrative receiver is acting in relation to the company;

(d) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed; and

(e) if the Official Assignee is proposed for appointment as provisional liquidator, whether and in what manner he has been given notice of the application.

Hearing of application

95. (1) If the Official Assignee is proposed to be appointed as provisional liquidator, he is entitled to attend the hearing and make such representations as he considers appropriate.

(2) The Court shall not appoint the Official Assignee as provisional liquidator of a company unless he has been given notice of the application in accordance with rule 94(2).

Order appointing provisional liquidator

96. (1) The order appointing a provisional liquidator shall specify the functions to be carried out by him in relation to the company's affairs and assets.

(2) The Court shall, forthwith on making an order appointing a provisional liquidator, give notice to the provisional liquidator of his appointment and, as soon as is practicable—

(a) send two sealed copies of the order to the provisional liquidator; and

(b) send one copy of the sealed order to any administrator or administrative receiver who has been appointed.

(3) The provisional liquidator shall, as soon as practicable, send one copy of the sealed order to the company.

First meeting of creditors

97. (1) The notice of the first meeting of creditors required to be sent under section 180(1)*(a)* of the Ordinance shall state—

(a) the business to be conducted at the meeting, as specified in sub-rule (2); and

(b) that the liquidator will, at the request of any creditor, during the period before the date of the meeting furnish the creditor with—

(i) a list of the creditors of the company known to the liquidator; and

(ii) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide,

and shall be accompanied by a claim form as required by rule 110.

(2) The first meeting of creditors may pass only one or more of the following resolutions—

(a) such resolutions as are necessary to exercise the powers specified in section 180(4) of the Ordinance;

(b) a resolution to adjourn the meeting for a period of not more than twenty-one days;

(c) if the meeting has been requisitioned in accordance with section 184*(b)*(iii) of the Ordinance, a resolution that the expenses of calling and holding the meeting are to be payable out of the assets of the company;

(d) any other resolution that the chairman allows to be put to the meeting.

Advertisement of appointment

98. (1) This Rule applies to the advertisement by a liquidator of his appointment as required by section 179 of the Ordinance.

(2) A liquidator shall advertise his appointment—

(a) as specified in rule 306(1)*(a)*;

(b) in a newspaper published and circulating in the Islands; and

(c) in such other newspaper or newspapers, if any, that he considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

Authentication of liquidator's appointment

99. A copy of the certificate of the liquidator's appointment (if he was appointed by the members) or a sealed copy of the Court's order appointing the liquidator may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's liquidation.

Removal of liquidator

100. (1) Application for the removal of a liquidator under section 188 of the Ordinance is made by filing at Court—

(a) an application stating the grounds upon which the removal of the liquidator is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the liquidator and the Official Assignee, unless it is the Official Assignee's application, not less than ten days before the date fixed for the hearing.

(3) The liquidator may file affidavit evidence in opposition to the application not less than four days before the date fixed for the hearing of the application.

(4) The liquidator shall, not less than four days after being served with an application under sub-rule (2) send to the Official Assignee a statement as to whether any of the company's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—

(a) the nature, value and location of the assets;

(b) any action taken by the liquidator to deal with the assets or his reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a liquidator shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the liquidator on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove the liquidator of a company are not payable out of the assets of the company.

(8) If the Court removes a liquidator under section 188 of the Ordinance, it shall send a copy of the order removing him to—

(a) the liquidator removed;

(b) any remaining liquidator; and

(c) the Official Assignee.

(9) If the Court removes a liquidator under section 188 of the Ordinance, it may appoint the Official Assignee as liquidator under section 188(3)*(b)* of the Ordinance notwithstanding that the company commenced liquidation on the appointment of a liquidator by the members under section 159 of the Ordinance.

Resignation of liquidator no longer eligible to act

101. (1) If the liquidator resigns under section 189(1)*(a)* of the Ordinance, he shall send the Official Assignee with the notice of his resignation, a statement covering the matters specified in rule 100(4).

(2) The liquidator shall, if so directed by the Official Assignee, verify the statement by affidavit.

Resignation of liquidator for other reason

102. (1) Unless the liquidator is a joint liquidator resigning in accordance with section 189(3) of the Ordinance, the notice of a creditors' meeting sent to creditors in accordance with section 189(4) of the Ordinance shall be accompanied by an account of the liquidator's administration of the liquidation, including a summary of his receipts and payments.

(2) The liquidator shall, not less than seven days before the date fixed for the creditors' meeting—

(a) send a copy of the notice and account referred to in sub-rule (1) and a statement covering the matters specified in rule 100(4) to the Official Assignee; and

(b) if he was appointed by the Court, file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 189(4) of the Ordinance either of the following resolutions is passed—

(a) that the liquidator's resignation be accepted;

(b) that a new liquidator be appointed,

the chairman shall, forthwith, send the Official Assignee a copy of the resolution together with a certificate of the liquidator's appointment, signed by the chairman.

(4) If a liquidator's resignation is accepted by the creditors, he shall forthwith—

(a) send a notice of his resignation to the Official Assignee; and

(b) if he was appointed by the Court, file a notice of his resignation with the Court.

(5) The liquidator's resignation is effective from the date that the notice of his resignation is received by the Official Assignee, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former liquidator.

(6) Within fourteen days of receiving a copy of the endorsed notice from the Official Assignee under sub-rule (5), the former liquidator shall file a copy of the endorsed notice with the Registrar.

Leave to resign

103. (1) A liquidator shall, not less than seven days before the date fixed for the hearing of an application for leave to resign under section 189(6) of the Ordinance, give notice of his application to—

(a) any joint liquidator;

(b) the creditors' committee, if any; and

(c) the Official Assignee.

(2) If the Court gives the liquidator leave to resign, it may make such provision as it consider appropriate with respect to matters arising in connection with the resignation.

(3) If the Court gives the liquidator leave to resign, section 188(3) of the Ordinance and rule 100(9) apply with such modifications as are necessary.

(4) The Court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of the copies to the Official Assignee.

(5) Within fourteen days of his resignation, the former liquidator shall send a notice of his resignation to the Official Assignee and to the Registrar.

Death of liquidator

104. (1) If the liquidator dies, his personal representative shall give notice of his death to the Official Assignee and the Registrar, specifying the date of his death, unless notice has already been given to the Court and the Registrar under sub-rules (2) or (3).

(2) If a liquidator who dies was a partner in a firm, notice of his death may be given to the Official Assignee and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of a liquidator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

(4) If the Official Assignee receives a notice under sub-rule (3) and the deceased liquidator was the sole liquidator of the company, the Official Assignee shall as soon as reasonably practicable apply to the Court under section 190(1) of the Ordinance for the appointment of a replacement liquidator, unless an application has already been made by the creditors' committee.

Advertisement of appointment

105. (1) A liquidator who is appointed to replace a liquidator who has, for whatever reason, ceased to hold office, shall within twenty-one days of the date of his appointment, advertise his appointment.

(2) His advertisement shall state that he has been appointed in place of a liquidator who ceased office.

Solicitation

106. (1) If the Court is satisfied that any improper solicitation has been used by or on behalf of a liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the liquidator out of the assets of the company.

(2) An order of the Court under sub-rule (1) overrides any resolution of the creditors' committee or any other provision of the Rules.

List of members

107. (1) The list of members settled by the liquidator under section 194(1) of the Ordinance shall identify—

(a) the classes of the company's shares, if more than one;

(b) the classes of members, if more than one.

(2) The list shall detail, in respect of each member—

(a) his name and address;

(b) the number and class of shares held by him, or the extent of any other interest to be attributed to him;

(c) if the shares are not fully paid up, the amounts that have been called up and paid in respect of them, and the equivalent if his interest is other than shares.

Procedure for settling list of members

108. (1) The notice given to each person under section 194(2) of the Ordinance shall state—

(a) in what character, and for what number of shares or what interest, he is included in the list;

(b) what amounts have been called up and paid up in respect of the shares or interest;

(c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called; and

(d) the rights of a person to object under sub-rules (2) and (3) of this rule.

(2) If a person objects to any entry in, or omission from, the list, he shall inform the liquidator of his objection in writing within twenty-one days from the date of the notice.

(3) If the liquidator receives an objection under sub-rule (2), he shall, within fourteen days, give notice to the objector either—

(a) that he has amended the list, specifying the amendment; or

(b) that he does not accept the objection and that he does not intend to amend the list.

(4) A notice given under sub-rule (3) shall contain a summary of the effects of section 194(3) and (4) of the Ordinance.

Claims by unsecured creditors

109. A claim made against a company in liquidation by an unsecured creditor under section 209 of the Ordinance shall be in the approved form and shall specify—

(a) the name and address of the creditor;

(b) the total amount of his claim as at the commencement of the liquidation;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the company;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself.

Claim forms

110. (1) Unless the Court otherwise orders, the liquidator shall send a claim form to each creditor of whom he is aware at the same time as he sends the creditor—

(a) notice of the first meeting of creditors under section 180(1)*(a)* of the Ordinance; or

(b) notice under section 184*(b)* of the Ordinance that he does not consider it necessary to call a meeting of creditors.

(2) The liquidator shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 180(1)*(a)* or section 184*(b)* of the Ordinance.

Application to Court expunge or amend an admitted claim

111. The applicant for an order expunging or reducing a claim under section 210(2) of the Ordinance shall serve a copy of his claim—

(a) in the case of an application by the liquidator, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the liquidator and on the creditor who submitted the claim.

Negotiable instruments

112. The liquidator may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the liquidator.

Inspection of claims

113. The liquidator shall allow claims in his custody or control to be inspected by—

(a) a creditor who has submitted a claim in the liquidation that has not been wholly rejected by the liquidator;

(b) a contributory of the company;

(c) a person acting on behalf of a person referred to in paragraph *(a)* or *(b)*.

Distribution by dividend

114. The liquidator shall make a distribution by distributing dividends among the creditors whose claims he has admitted.

Notice to submit claim

115. A notice issued under section 216(1) of the Ordinance shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

Distributions

116. (1) In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision—

(a) for any claims which creditors may not have had sufficient time to make;

(b) for any claims which have not yet been determined; and

(c) for any disputed claims.

(2) A creditor who has not submitted a claim by the date specified in the notice issued under section 216(1) of the Ordinance is not entitled to disturb, by reason that he has not participated in it, the distribution of the dividend.

(3) When a creditor referred to in sub-rule (2) makes a claim that is accepted by the liquidator—

(a) he is entitled to be paid, out of any money for the time being available for distributing a further dividend, a payment in respect of any dividend which he has failed to receive; and

(b) any payment under paragraph *(a)* shall be paid before that money is used to distribute a further dividend to creditors.

(4) No action lies against the liquidator for a dividend but if he refuses to pay a dividend, the Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the Court rate, from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

Distribution of dividend

117. If the liquidator distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Notice of disclaimer

118. (1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed at Court with a copy.

(3) The original notice and the copy notice shall be sealed by the Court, endorsed with the date of filing and the copy notice shall be returned to the liquidator.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the sealed notice of disclaimer was returned to the liquidator.

Communication of notice of disclaimer

119. (1) Written notice of a disclaimer notice shall be given under section 217(2) and 218(2) of the Ordinance by sending or giving a copy of the sealed and endorsed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 217 of the Ordinance, the following are persons whose rights are affected by a disclaimer of property—

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(c) if the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a liquidator that a person's rights are affected by a disclaimer, the liquidator shall forthwith give written notice of the disclaimer to that person in accordance with this rule unless—

(a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A liquidator disclaiming property may at any time, in addition to his obligations under the Ordinance and the Rules, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

Duty to keep Court informed

120. The liquidator shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Ordinance and the Rules, specifying the name and address of each person and his interest in the property disclaimed.

Notice to elect

121. A notice to elect shall be served on a liquidator by delivering the notice to him personally or sending it to him by registered post.

Notice to declare interest in onerous property

122. (1) If it appears to the liquidator that a person may have an interest in onerous property, he may give notice to that person to declare, within fourteen days, whether he claims any interest in the property and, if so, the nature and extent of his interest.

(2) If a person fails to comply with a notice given under sub-rule (1), the liquidator is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

Application for vesting order or order for delivery

123. (1) An application for a vesting order or an order for delivery under section 221 of the Ordinance shall be made within three months of—

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the liquidator,

whichever is the earlier.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the liquidator and an affidavit—

(a) stating whether his claim is based upon an interest in the disclaimed property or whether it is based upon an undischarged liability;

(b) specifying the date upon which he received a copy of the liquidator's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 221 of the Ordinance.

(3) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the liquidator—

(a) a sealed copy of the application endorsed by the Court; and

(b) a copy of the affidavit filed in support.

(4) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(5) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the liquidator.

(6) Unless there is an application, or more than one application, pending under section 221 of the Ordinance, in a case where the property disclaimed is of a leasehold nature, and section 222(2) of the Ordinance applies to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Prescribed priority

124. The following costs and expenses of the liquidation shall be paid in the order of priority in which they are listed (the "prescribed priority")—

(a) the costs and expenses properly incurred by the liquidator in preserving, realising or getting in the property of the company or in carrying on the company's business, including—

(i) the costs and expenses of any legal proceedings which the liquidator has brought or defended whether in his own name or in the name of the company; and

(ii) the costs of and in connection with an examination ordered under section 253 of the Ordinance;

(b) the costs and expenses of complying with a notice issued by the Official Assignee under section 292(2) of the Ordinance;

(c) the remuneration of the provisional liquidator;

(d) the deposit lodged on an application for the appointment of a provisional liquidator;

(e) the costs of the application on which the liquidator was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(f) any costs allowed in respect of the preparation of a statement of affairs;

(g) the cost of and in respect of any creditors' committee appointed in the liquidation;

(h) any disbursements properly paid by the liquidator;

(i) the remuneration of anyone employed by the liquidator;

(j) the remuneration of the liquidator;

(k) any other fees, costs, charges or expenses properly incurred in the course of the liquidation or properly chargeable by the liquidator in carrying out his functions in the liquidation.

PART VII

PROVISIONS WITH REGARD TO COMPANIES THAT ARE INSOLVENT OR IN LIQUIDATION

Interpretation

125. The words and expressions defined in Part VIII of the Ordinance have the same meaning in this Part.

Notice requiring statement of affairs

126. (1) A notice requiring a relevant person to submit a statement of affairs shall state—

(a) the names and addresses of all other persons, if any, to whom the same notice has been sent;

(b) the dates within which the statement of affairs shall be made up to;

(c) the time within which the statement shall be delivered to the office holder;

(d) the effect of section 246(4) of the Ordinance; and

(e) the effect of section 250 of the Ordinance, if appropriate.

(2) A notice under sub-rule (1) shall be accompanied by the forms required for the preparation of the statement of affairs.

(3) For the purposes of sub-rule (1)*(b)*, a statement of affairs shall be made up to a date not more than fourteen days before—

(a) if the company is in administration, the date of the administration order;

(b) if the company is in administrative receivership, the date that the administrative receiver was first appointed; and

(c) if the company is in liquidation, the date that the liquidation commenced in accordance with section 158 of the Ordinance.

Matters to be included in statement of affairs

127. A statement of affairs shall include the following particulars—

(a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;

(b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;

(c) the names and addresses of the company's preferential creditors with the amounts of their respective claims;

(d) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;

(e) particulars of any debts owed by or to the company to or by connected persons; and

(f) the names and addresses of the company's members, with details of their respective shareholdings.

Verification and delivery of statement of affairs

128. A statement of affairs—

(a) shall be verified by affidavit; and

(b) shall be delivered to the office holder, together with the affidavit of verification, within the time period specified in the notice issued under rule 126.

Affidavit of concurrence

129. (1) Subject to sub-rule (3), an affidavit of concurrence is an affidavit stating that the maker of the affidavit—

(a) has been provided with a statement of affairs of a company prepared and verified by a relevant person in accordance with section 246(3) of the Ordinance pursuant to a notice sent to him by an officer holder under section 245 of the Ordinance;

(b) concurs that the statement of affairs is complete and accurate and is not, in any respect, misleading; and

(c) has sufficient direct knowledge of the company's affairs to make the affidavit.

(2) An affidavit of concurrence shall have exhibited to it the statement of affairs with which the maker concurs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, if the person making the affidavit of concurrence considers the statement of affairs to be erroneous or misleading or he is without the direct knowledge necessary for concurring with it.

Filing of statement of affairs and affidavit of concurrence

130. (1) Subject to section 249 of the Ordinance and to sub-rule (2), an office holder shall as soon as reasonably practicable after receiving a verified statement of affairs or an affidavit of concurrence, file a copy with the Registrar and with the Court.

(2) A liquidator appointed by the members of a company and an administrative receiver appointed out of Court is not required to file a verified statement of affairs or an affidavit of concurrence with the Court.

Release from duty to submit statement of affairs and extension of time

131. (1) If a relevant person has received a notice requiring him to prepare and submit a statement of affairs, he may request the office holder who sent him the notice for—

(a) a release from his obligation; or

(b) an extension of time for submitting the statement of affairs,

under section 248 of the Ordinance.

(2) An office holder may grant a release of an obligation or an extension of time under section 248 of the Ordinance at his own discretion, without having received a request from the relevant person concerned.

Application to Court if office holder refuses a request under rule 131

132. (1) If an office holder refuses a request made under rule 131, the relevant person concerned may apply to the Court for an order granting him the release or the extension.

(2) An applicant shall give the office holder at least ten business days' notice of an application under sub-rule (1) and of any affidavit filed in support of his application.

(3) The office holder is entitled to appear and make representations at the hearing of an application under sub-rule (1) and, whether or not he appears, to file with the Court a written report setting out any matters that he considers should be brought to the attention of the Court.

(4) An office holder shall send the applicant a copy of a report filed under sub-rule (3) at least five business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the applicant's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made out of the assets of the company or, in the case of an administrative receivership, out of the assets under the administrative receiver's control.

(6) The Court shall send sealed copies of an order made under this rule to the office holder and to the relevant person who made the application.

Expenses of statement of affairs

133. (1) Subject to sub-rule (3), a relevant person preparing a statement of affairs and making a verifying affidavit shall be allowed, and paid by the office holder out of the assets of the company or, in the case of an administrative receivership, out of the assets under the administrative receiver's control, any expenses he incurs in so doing which the office holder considers reasonable.

(2) Nothing in this rule relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to, the office holder.

(3) No payment may be made to the office holder or any of his associates in respect of any assistance given to a relevant person in the preparation of his statement of affairs unless approved by the creditors' committee.

Order of limited disclosure

134. (1) If the Court makes an order of limited disclosure under section 249 of the Ordinance in respect of a statement of affairs, the office holder shall, as soon as reasonably practicable, file the verified statement of affairs with the Registrar, to the extent provided by the order.

(2) If there is a material change in circumstances rendering the limit on disclosure, or any part of it, unnecessary, office holder shall, as soon as reasonably practicable after the change, apply to the Court for the order to be varied or rescinded.

(3) The office holder shall, as soon as reasonably practicable after the making of an order under sub-rule (2), file the verified statement of affairs with the Registrar, to the extent provided by the order.

Application by creditor for disclosure

135. (1) If a creditor seeks disclosure of a statement of affairs or a specified part of a statement of affairs in relation to which an order has been made under section 249 of the Ordinance, he may apply to the Court for an order that the office holder disclose it or a specified part of it.

(2) An application under sub-rule (1) shall be—

(a) supported by an affidavit; and

(b) served on the office holder, together with the supporting affidavit, not more than three business days prior to the date fixed for the hearing.

(3) The Court may make an order for disclosure to the creditor subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

Request by office holder for information

136. (1) A notice to provide information under section 250(1)*(a)* of the Ordinance shall specify the period within which the information shall be submitted to the office holder and shall state whether the office holder requires the information to be verified by affidavit.

(2) If the office holder requires the recipient of a notice under section 250(1)*(a)* of the Ordinance to prepare and submit accounts of the company, rule 133 applies with such modifications as are necessary.

(3) An office holder shall not require accounts to be prepared and submitted to him for a period more than five years prior to the appropriate date specified in paragraphs *(a)* to *(d)* of the definition of "relevant period" in section 241(1) of the Ordinance without the leave of the Court.

(4) The office holder may issue subsequent notices to a person specified under section 250(2) of the Ordinance, notwithstanding that a previous notice has been fully complied with.

Application for examination

137. (1) An application for the examination before the Court of a person under section 252 of the Ordinance shall be filed with the Court, without notice to the proposed examinee, together with a supporting affidavit.

(2) Neither the application nor the supporting affidavit are open to public inspection unless the Court otherwise orders.

(3) The matters contained in the supporting affidavit shall include—

(a) details of the proposed examinee and his relationship with the company concerned or a connected company;

(b) details of the matters upon which the applicant seeks to examine the proposed examinee and the reasons for his belief that the proposed examinee has knowledge of these matters;

(c) details of any books, records or other documents relating to the company or a connected company that the applicant believes are in the possession of the proposed examinee that he wishes the proposed examinee to produce at the examination;

(d) if he seeks an order for a public examination, the justification for a public examination;

(e) a statement as to whether the matters upon which he seeks to examine the proposed examinee are matters that he could examine him on using his powers under sections 250 and 251 of the Ordinance and, if so, whether or not he has conducted such an examination;

(f) if the applicant has conducted an examination under section 251 of the Ordinance, the reasons why a further examination before the Court is necessary;

(g) if the applicant is entitled to examine the proposed examinee under section 251 of the Ordinance, but has not done so, the reasons for the application to examine him before the Court.

Adjournment of examination

138. (1) An examination held pursuant to an order made under section 253 of the Ordinance may be adjourned by the Court either generally or to a fixed date.

(2) If an examination has been adjourned generally, the Court may, on the application of the liquidator, the Official Assignee or the examinee—

(a) fix a venue for the resumption of the hearing; or

(b) give directions as to the manner in which, and the time within which, notice is to be given to any person entitled to take part in the examination.

(3) If the examinee applies under sub-rule (2) for the resumption of a public examination, the Court may grant it on condition that the expenses of giving the notices required by that sub-rule are paid by the examinee and that, before a venue, date and time for the resumed public examination is fixed, he shall deposit with the Official Assignee or liquidator, as the case may be, such sum as the Official Assignee or liquidator considers necessary to cover those expenses.

Examinee unfit for examination

139. (1) If an examinee is suffering from any mental disorder or physical affliction or disability that renders him unfit to undergo or attend for an examination, the Court may, on application, either stay the order for his examination or direct that it shall be conducted in such manner and at such place as it considers fit.

(2) Application under this rule shall be made—

(a) by a person who has been appointed by a court in the Islands or elsewhere to manage the affairs of, or to represent, the examinee;

(b) by a relative or friend of the examinee whom the Court considers to be a proper person to make the application; or

(c) by the Official Assignee.

(3) If the application is made by a person other than the Official Assignee—

(a) it shall be supported by the affidavit of a medical practitioner as to the examinee's mental and physical condition; and

(b) at least seven days' notice of the application shall be given to the Official Assignee and the liquidator, if not the Official Assignee.

(4) If the application is made by the Official Assignee it may be made *ex parte*, and may be supported by evidence in the form of a report by the Official Assignee to the Court.

Adjournment of examination

140. (1) The Court may, in its discretion, adjourn an examination either to a fixed date or generally.

(2) If an examination has been adjourned generally, the Court may at any time on the application of the Official Assignee, the liquidator if not the Official Assignee, or of the examinee—

(a) fix a venue for the resumption of the examination; and

(b) give directions as to the manner in which, and the time within which, notice of the resumed examination is to be given to persons entitled to take part in it.

(3) If application under sub-rule (2) is made by the examinee, the Court may grant it on terms that the expenses of giving the notices required by that sub-rule shall be paid by him and that, before a venue for the resumed examination is fixed, he shall deposit with the Court such sum as it considers reasonable to cover those expenses.

PART VIII

PERSONAL INSOLVENCY AGREEMENTS

Scope and interpretation for this Part

141. (1) This Part applies if a debtor makes, or intends to make, a proposal under Part XI of the Ordinance and in respect of any personal insolvency agreement that may be approved.

(2) In this Part—

"creditors' meeting" means a creditors' meeting held under Part XI of the Ordinance; and

"nominee" includes the Official Assignee, if nominated as interim supervisor under section 296(2)*(b)* of the Ordinance.

Additional matters that may be included in a personal insolvency agreement

142. Subject to section 294(4) of the Ordinance, and without limiting section 294(1) of the Ordinance, a personal insolvency agreement may—

(a) provide for circumstances in which persons who become creditors of the debtor after the approval of a personal insolvency agreement are entitled to be paid under the personal insolvency agreement in priority to creditors bound by the personal insolvency agreement;

(b) specify a date or a time at which liabilities of the debtor will be calculated and provide how liabilities arising after that date are to be dealt with; and

(c) be entered into in conjunction with any other arrangement, reorganisation or scheme taking effect under the law of another jurisdiction, whether subject to Court approval or otherwise.

Form and contents of proposal

143. (1) A proposal shall be in writing and shall include—

(a) a summary of the proposed personal insolvency agreement with a brief explanation as to its main features and as to why the personal insolvency agreement is desirable and why the debtor's creditors might be expected to agree to it;

(b) to the best of the debtor's knowledge and belief, particulars of his assets specifying—

(i) an estimate of their respective values;

(ii) the extent, if any, to which the assets are charged in favour of creditors; and

(iii) the extent, if any, to which particular assets are to be excluded from the personal insolvency agreement;

(c) particulars of any assets, other than those of the debtor himself, which it is proposed will be included in the personal insolvency agreement, specifying—

(i) the source of the assets; and

(ii) the terms upon which they are to be made available to creditors under the personal insolvency agreement;

(d) to the best of the debtor's knowledge and belief, particulars of the nature and amount of his liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the personal insolvency agreement, specifying in particular—

(i) how it is proposed that preferential creditors and creditors who are or who claim to be secured creditors will be dealt with;

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected persons in relation to the debtor;

(iii) whether there are, to the knowledge of the debtor, any circumstances giving rise to the possibility, in the event that a bankruptcy order should be made against the debtor, of claims for a voidable transaction under Part XIII of the Ordinance and, if so, whether and how it is proposed to make provision for wholly or partly making the value of such claims available to the creditors under the personal insolvency agreement; and

(iv) whether there any persons with non-admissible or postponed claims against the debtor and how it is proposed that they will be dealt with, if at all;

(e) particulars of any security interests, liens, rights of set-off held by creditors and as to any guarantees of the debtor's debts given by third parties, specifying which of the sureties, if any, are connected persons in relation to the debtor;

(f) how it is proposed that the claims of any creditor who did not participate in the approval of the personal insolvency agreement, as provided by sub-rule (2), will be dealt with;

(g) details of the proposed duration of the personal insolvency agreement;

(h) the proposed dates of distributions of assets to creditors of the debtor, with estimates of their amounts;

(i) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(j) details of any benefits, including guarantees, assets and any security interests that are to be offered by any person other than the debtor for the purposes of the personal insolvency agreement;

(k) details of any further loans or credit facilities which it is intended to arrange for the debtor, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(l) details of any business that will be conducted by the debtor during the course of the personal insolvency agreement and the manner in which funds payable to him will be dealt with during the period before the personal insolvency agreement is approved and during the course of the personal insolvency agreement, if approved;

(m) the manner in which funds or other assets held for the purpose of the personal insolvency agreement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(n) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the personal insolvency agreement, are to be dealt with;

(o) the functions to be undertaken by the interim supervisor and by the supervisor if the personal insolvency agreement is approved; and

(p) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he is, eligible to act in respect of the debtor.

(2) For the purposes of sub-rule (1)*(f)*, a creditor does not participate in the approval of the personal insolvency agreement if, for whatever reason—

(a) he was not given notice of the creditors' meeting called under section 308 of the Ordinance; and

(b) he did not attend the meeting at which the personal insolvency agreement was approved, whether in person or by proxy.

Statement of assets and liabilities

144. (1) The provisions of the Ordinance and the Rules relating to the statement of assets and liabilities required to be submitted by a bankrupt under section 405 of the Ordinance apply to a statement of assets and liabilities provided to the nominee under section 297(1)*(b)* of the Ordinance.

(2) Without limiting sub-rule (1), the statement of liabilities provided by a debtor under section 297(1)*(b)* of the Ordinance shall—

(a) supplement or amplify, so far as is necessary for clarifying the state of the debtor's affairs, those already given in the proposal; and

(b) contain, in addition to the matters required under rule 235(2), such other matters as the nominated solvency practitioner shall require.

(3) The statement of assets and liabilities shall be verified by the debtor.

Amendment or withdrawal of proposal before appointment of interim supervisor

145. (1) A debtor may, before the nominee has accepted appointment as interim supervisor—

(a) amend a proposal by providing a copy of the amended proposal to the nominee; or

(b) withdraw the proposal by providing a notice of withdrawal to the nominee.

(2) The withdrawal of a proposal under section 300(1)*(a)* of the Ordinance takes effect from the time that the notice of withdrawal is received by the nominee.

(3) The nominee shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the directors, administrator or liquidator, as the case may be.

Amendment or withdrawal of proposal after appointment of interim supervisor

146. (1) This rule applies if a debtor wishes to amend or withdraw a proposal after the appointment of an interim supervisor but before a meeting of creditors is called under section 308 of the Ordinance.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing before the interim supervisor calls a meeting of creditors under section 308 of the Ordinance; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Without limiting sub-rule (2)*(b)*, the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to amend the proposal and prepare

a report on the amended proposal before giving notice of the creditors' meeting under section 308 of the Ordinance.

(4) A proposal may be withdrawn under section 300(1)*(b)* of the Ordinance by providing the interim supervisor with a notice of withdrawal before the interim supervisor calls a creditors' meeting under section 308 of the Ordinance.

(5) On receipt of a notice of withdrawal in accordance with sub-rule (4), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the debtor.

(6) The withdrawal of a proposal under section 300(1)*(b)* of the Ordinance, and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(7) If the interim supervisor has filed a notice of his appointment under section 298 of the Ordinance with the Official Assignee and, if appropriate, provided a copy to the Commission, he shall, within two business days of receiving the withdrawal notice, file a copy of the notice with the Official Assignee and, if appropriate, provide a copy to the Commission.

(8) If a proposal is withdrawn under this rule, the debtor is liable to the former interim supervisor in respect of any costs and remuneration payable to him, including the costs of complying with sub-rule (7).

Amendment or withdrawal of proposal before creditors' meeting

147. (1) This rule applies if a debtor wishes to amend or withdraw a proposal after the calling of a meeting of creditors under section 308 of the Ordinance but before the meeting of creditors is held.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing at least four business days prior to the date fixed in the notice calling the meeting under section 308 of the Ordinance; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) If a proposal is amended under this rule, the interim supervisor shall give at least two business days' notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 308 of the Ordinance.

(4) Without limiting sub-rule (2)*(b)*, the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to comply with sub-rule (3).

(5) A proposal may be withdrawn under section 300(1)*(c)* of the Ordinance by providing the interim supervisor with a notice of withdrawal at least five business days prior to the date fixed for the creditors' meeting called under section 308 of the Ordinance.

(6) On receipt of a notice of withdrawal in accordance with sub-rule (5), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the debtor.

(7) The withdrawal of a proposal under section 300(1)*(c)* of the Ordinance, and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(8) Forthwith on receiving a notice of withdrawal under sub-rule (5), the former interim supervisor shall—

(a) send a notice cancelling the creditors' meeting to every creditor of the debtor and to the debtor himself; and

(b) file a copy of the notice of withdrawal with the Official Assignee and, if the debtor is a licensee, provide a copy to the Commission.

(9) If a proposal is withdrawn under section 300(1)*(c)* of the Ordinance, the debtor is liable to the former interim supervisor in respect of any costs and remuneration payable to him, including the costs of complying with sub-rule (8).

Effect of amendment or withdrawal of proposal

148. If a proposal is amended under rules 145, 146 or 147, Part XI of the Ordinance applies to the amended proposal as if it was the original proposal.

Appointment of interim supervisor

149. If the nominee agrees to act as interim supervisor, he shall—

(a) cause a copy of the instrument of appointment to be endorsed with—

(i) an acknowledgement that he has received a copy of the proposal together with the debtor's statement of assets and liabilities;

(ii) the date upon which he received the instrument of appointment together with a copy of the proposal;

(iii) the date or dates upon which he received an amended proposal from the debtor or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the debtor; and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed instrument of appointment to the debtor at the address specified in the instrument of appointment; and

(c) retain a copy of the endorsed notice in his records.

Application for moratorium order

150. (1) The affidavit supporting an application for a moratorium order shall—

(a) set out the reasons justifying the application;

(b) set out particulars of any execution or other legal process which, to the debtor's knowledge, has been commenced against him;

(c) confirm that, in accordance with section 332 of the Ordinance, the Court could make a bankruptcy order against the debtor on his application;

(d) confirm that no previous application for a moratorium order has been made by the debtor in the period of two months immediately preceding the date of the application; and

(e) confirm that an eligible insolvency practitioner has accepted appointment as interim supervisor.

(2) On receipt of the application and affidavit, the Court shall fix a venue, date and time for the hearing of the application.

Report to Court

151. (1) The report submitted by the interim supervisor to the Court under section 306 of the Ordinance shall include—

(a) a summary of the affairs of the debtor and, if relevant, the conduct of his business during the proposal period;

(b) his opinion as to whether the debtor is insolvent;

(c) his opinion as to whether the personal insolvency agreement which the debtor is proposing has a reasonable chance of being approved and implemented;

(d) his opinion as to whether a meeting of the debtor's creditors should be called to consider the proposal;

(e) if, in his opinion, such a meeting should be called, the venue he proposes for the meeting;

(f) the costs of his acting as interim supervisor; and

(g) any other matters that he considers should be brought to the attention of the Court.

(2) The date proposed by the interim supervisor for a creditors' meeting under sub-rule (1)*(e)* shall be at least twenty-one days but no more than thirty-five days from the date that his report is filed with the Court.

General provisions to apply

152. Rules 274 to 294 apply to a creditors' meeting held under Part XI of the Ordinance, subject to any modification required by rules 153 to 155.

Chairman of creditors' meeting

153. Subject to rule 274(2) and (3), the interim supervisor or the supervisor shall be the chairman of every creditors' meeting.

Entitlement to vote and admission and rejection of claims

154. (1) A creditor is not entitled to vote at a creditors' meeting unless written notice of his claim is given to the interim supervisor, or supervisor, or the chairman of the meeting either at the meeting or before it.

(2) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(3) At any creditors' meeting held under Part XI of the Ordinance, a creditor may vote in respect of a claim for an unliquidated amount or on any claim the value of which is not ascertained and for the purposes of voting, but not otherwise, his claim shall be valued at $1.00 unless the chairman agrees to put a higher value on it.

Requisite majorities at creditors' meeting

155. (1) The majority required for the passing of a resolution at a creditors' meeting is—

(a) for the approval of a personal insolvency agreement or of a modification of a personal insolvency agreement, 75% or more in value of the creditors present in person or by proxy who vote on the resolution; and

(b) in respect of any other matter, in excess of 50% in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

(a) to whom notice of the meeting was sent;

(b) who are not entitled to vote by reasons of rule 154(1) or rule 281(2) or if the claim, or the part voted on, is secured; and

(c) who are not, to the best of the chairman's belief, connected persons in relation to the company.

(3) It is for the chairman of the meeting to decide whether under this rule a person is a connected person for the purposes of sub-rule (2)*(c)*.

Appointment of joint supervisors

156. If joint supervisors of a personal insolvency agreement are appointed, they may act jointly or severally unless the personal insolvency agreement provides otherwise.

Notice of personal insolvency agreement

157. (1) The notice of personal insolvency agreement required to be filed with the Official Assignee shall contain the following details—

(a) the name and address of the debtor;

(b) the date on which the personal insolvency agreement was approved by the creditors; and

(c) the name and address of the supervisor.

(2) A person who is appointed supervisor of a personal insolvency agreement, whether as the first supervisor, an additional supervisor or a replacement supervisor, shall file a notice of his appointment with the Official Assignee.

(3) A person vacating office as supervisor shall file a notice of vacation of office with the Official Assignee.

Application concerning supervisor or interim supervisor

158. (1) If a person intends to apply to the Court under section 321 of the Ordinance for the appointment or removal of a supervisor or an interim supervisor, he shall give every supervisor or interim supervisor seven days' notice of his application.

(2) The supervisor, or interim supervisor, is entitled to appear and be represented at the hearing of an application referred to in sub-rule (1).

Revocation or suspension

159. (1) This rule applies when the Court makes an order of revocation or suspension under section 325(1)*(a)* of the Ordinance.

(2) The person who applied for the order shall serve sealed copies of the order on the supervisor and on the debtor.

(3) If the order includes a direction by the Court for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(4) The debtor shall—

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the personal insolvency agreement or who, not having been sent that notice, appear to be affected by the order;

(b) within seven days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether he intends to make a revised proposal to his creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within seven days after the making of the order, file a copy of the order with the Official Assignee.

Service of orders

160. If a moratorium order is made or any order is made on the consideration of the interim supervisor's report, at least two sealed copies of the order shall be sent by the Court forthwith to the debtor and the debtor shall serve a copy of the order on—

(a) the interim supervisor; and

(b) any creditor who, to his knowledge has applied for a bankruptcy order against him.

PART IX

BANKRUPTCY

Official name

161. The official name of a bankruptcy trustee is "the trustee of the estate of (name of bankrupt) a bankrupt" but he may be known as the bankruptcy trustee of the bankrupt.

Appointment of Official Assignee as trustee

162. (1) The Court may appoint the Official Assignee as the bankruptcy trustee of a debtor on an application under Part XII of the Ordinance, notwithstanding that—

(a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as trustee;

(b) the Official Assignee has not consented to act as trustee; and

(c) the Official Assignee has not been given notice of the application.

(2) When the Official Assignee is the trustee of a bankrupt, any provision of the Ordinance or the Rules requiring the trustee to send or give any notice or other document to the Official Assignee shall be construed as requirement that the notice or document is to be retained by the Official Assignee as a record of the bankruptcy.

Application

163. (1) This rule and rules 164 to 188 apply to—

(a) a creditor's application for a bankruptcy order under section 333 of the Ordinance;

(b) an application of a creditor or the supervisor of a personal insolvency agreement under section 338 of the Ordinance, with such modifications as are appropriate; and

(c) the making of a bankruptcy order on an application specified in paragraphs *(a)* or *(b)*.

(2) In the rules specified in sub-rule (1), unless the context otherwise requires—

"applicant" means the person making an application;

"application" means an application for a bankruptcy order under section 333 or, if appropriate, under section 338 of the Ordinance.

Form of creditor's application

164. An application shall be dated and shall be signed—

(a) by the applicant himself; or

(b) on the applicant's behalf by a person who is authorised by him and who has the requisite knowledge of the matters referred to in the application,

and shall be witnessed.

Identification of debtor

165. (1) An application shall state the following particulars with respect to the debtor—

(a) his name;

(b) his place of residence;

(c) his occupation;

(d) the nature of his business, if any, and the address at which he carries it on; and

(e) any name other than the one specified under paragraph *(a)*, including a business name, which, to the applicant's personal knowledge, the debtor has used.

(2) The title of the proceedings shall be determined by the particulars given under sub-rule (1)*(a)* and *(e)*.

Particulars of liability

166. An application shall state the following matters with respect to the liability in respect of which the application is made—

(a) the amount of the liability at the date of the application;

(b) the consideration for the liability or, if there is no consideration, the nature of the liability;

(c) if the amount claimed in the application includes interest, penalties, charges or any pecuniary consideration in lieu of interest, the amount claimed and the rate at which and the period for which it was calculated, which shall be separately identified;

(d) when the liability was incurred or became due;

(e) if the liability is founded on a judgment or an order of a court, details of the judgment or order, including the action under which the judgment or order was obtained and the date of the judgment or order; and

(f) if the debt is founded on grounds other than a judgment or an order of a court, such details as would enable the debtor to identify the debt.

Application based on statutory demand

167. (1) An application based on the debtor's failure to comply with the requirements of a statutory demand, shall state the date and manner of service of the statutory demand and that to the best of the creditor's knowledge and belief, the demand has neither been complied with nor set aside and that no application to set it aside is pending.

(2) An application may not be made based on a statutory demand served more than four months before the filing date of the application.

Application based on unsatisfied execution

168. (1) An application based on an unsatisfied execution or other process shall specify—

(a) the judgment, decree or order on which the execution was issued;

(b) the court which issued the execution against the debtor;

(c) the mode of execution; and

(d) the extent, if any, to which the judgment debt has been satisfied as a result of the execution.

(2) An application may not be made based on an execution or other process completed more than four months before the filing date of the application.

Other matters to be specified in application

169. (1) An application shall state which of the grounds for making a bankruptcy order specified in section 330(1) of the Ordinance apply to the debtor.

(2) An application under section 338 of the Ordinance shall provide sufficient details to enable the debtor to understand the grounds on which the bankruptcy order is sought.

Filing of application

170. Application for a bankruptcy order is made by filing at Court an application together with—

(a) an affidavit verifying service of the statutory demand, if required under rule 172; and

(b) an affidavit in support of the application complying with rule 171.

Affidavit in support

171. (1) An application shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made by the applicant or by the person who signed the application on the applicant's behalf.

(4) A supporting affidavit is *prima facie* evidence of the statements in the application to which it relates.

(5) The following documents shall be exhibited to the affidavit in support of an application—

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

Affidavit of service of statutory demand

172. (1) If an application is based on the debtor's failure to comply with the requirements of a statutory demand, an affidavit of service of the statutory demand complying with the Court Rules shall be filed together with the application.

(2) If the statutory demand has been served other than by personal service, the affidavit shall—

(a) give particulars of the steps taken to effect personal service and the reasons for which they have been ineffective;

(b) state the means whereby, attempts at personal service having been unsuccessful, it was sought to bring the demand to the debtor's attention and explain why such means would have best ensured that the demand would be brought to the debtor's attention;

(c) exhibit evidence of such alternative mode or modes of service; and

(d) specify a date by which to the best of the knowledge, information and belief of the person making the affidavit, the demand would have come to the debtor's attention.

(3) If the affidavit specifies a date for the purposes of compliance with sub-rule (2) *(d)*, then unless the Court otherwise orders, that date is deemed to have been the date on which the statutory demand was served on the debtor.

(4) The Court shall dismiss the application for a bankruptcy order if it is not satisfied that the creditor has discharged the obligations imposed on him by rule 75.

Service of application for bankruptcy order

173. Subject to rule 174, an application shall be served personally on the debtor by an officer of the Court, by the creditor making the application or his solicitor or by a person in their employment.

Substituted service

174. (1) If the Court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of a creditor's application, or for any other cause, the Court may order substituted service to be effected in such manner as it considers appropriate.

(2) If an order for substituted service has been carried out, the application is deemed to have been served on the debtor.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

Death of debtor before service

175. If a debtor dies before service on him of an application, the Court may order service to be effected on his personal representatives or on such other persons as it considers appropriate.

Affidavit of service of application for bankruptcy order

176. (1) Service of an application on the debtor shall be verified by an affidavit of service complying with the Court Rules.

(2) If an order has been made for substituted service of the application, a sealed copy of the order for substituted service and any evidence of service shall be exhibited to the affidavit of service.

(3) The affidavit of service shall be filed with the Court forthwith after service has been effected.

Copies of application to be sent to other persons

177. A sealed copy of an application shall be sent, as soon as reasonably practicable—

(a) if the application is made under section 338 of the Ordinance, and the applicant is not the supervisor of the personal insolvency agreement, to the supervisor;

(b) if the individual is, or at any time has been, a licensee, to the Commission.

Application seeking appointment of supervisor as trustee

178. (1) This rule applies when an applicant proposes as trustee the supervisor of a personal insolvency agreement in place in respect of the debtor.

(2) Within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor—

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he be appointed bankruptcy trustee; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Application opposed by debtor

179. If a debtor intends to oppose an application he shall, not less than five days before the date fixed for the hearing of the application, file with the Court and send to the applicant a notice setting out the grounds on which he opposes the application.

Notice of intention to appear

180. (1) A creditor who intends to appear on the hearing of an application shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify—

(a) the name and address of the person giving notice and his contact details, if any;

(b) whether it is his intention to support or oppose the application; and

(c) the amount and nature of the liability of the debtor to him.

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16.00 hours on the business day before the date fixed for the hearing of the application, or if the hearing has been adjourned, the adjourned hearing.

List of appearances

181. (1) An applicant shall prepare a list of the creditors, if any, who have sent him a notice of intention to appear in accordance with rule 180, specifying, in respect of each person—

(a) his name and address;

(b) his legal practitioner; if known; and

(c) whether he intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule 183*(e)*, the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

Hearing of application

182. (1) Subject to sub-rule (2), an application shall not be heard until the expiration of fourteen days, or such longer time as the Court may direct, from the service of the application on the debtor.

(2) The Court may, on such terms as it considers appropriate, hear the application at an earlier date if—

(a) it is satisfied that the debtor has absconded;

(b) it is satisfied that it is a proper case for an expedited hearing; or

(c) the debtor consents to a hearing within the fourteen days.

Parties who may be heard

183. Any of the following persons may appear and be heard on the hearing of an application—

(a) the applicant;

(b) the debtor;

(c) the supervisor of any personal insolvency agreement in place in respect of the debtor;

(d) any creditor who has given notice to the Court of his intention to appear at the hearing of the application;

(e) a creditor who, having failed to comply with rule 180, is granted leave by the Court to appear; and

(f) the Official Assignee.

Non-appearance of applicant or failure to prosecute application

184. If the applicant fails to appear on the hearing of the application or fails to prosecute the application diligently, the application may be dismissed and no subsequent application against the same debtor shall be filed by the same creditor in respect of the same debt without the leave of the Court.

Extension of time for hearing

185. (1) The applicant may, if the application has not been served, apply to the Court to fix another venue for the hearing of the application.

(2) An application under sub-rule (1) shall state the reasons why the application has not been served.

(3) No costs occasioned by an application under sub-rule (1) shall be allowed in the proceedings unless the Court otherwise orders.

(4) The application shall be amended before service to reflect the new hearing date.

(5) If the Court fixes another venue for the hearing, the applicant shall as soon as reasonably practicable notify any creditor who has given notice under rule 180.

Adjournments

186. (1) If the Court adjourns the hearing of the application, the applicant shall forthwith send a notice of the order adjourning the hearing to the debtor and any creditor who has given notice under rule 180.

(2) A notice of an order adjourning the hearing of an application shall state the venue for the adjourned hearing.

Substitution of applicant

187. (1) In the circumstances specified in sub-rule (2), the Court may, by order, substitute as applicant, a creditor who—

(a) has given notice of his intention to appear and support the application under rule 180 and appears at the hearing;

(b) wishes to prosecute the application; and

(c) was in such a position in relation to the debtor at the date on which the application was filed as would have enabled him on that date to file an application against the debtor.

(2) The Court may make a substitution order under sub-rule (1) if the Court considers it appropriate to do so—

(a) because the applicant applies to withdraw the application, consents to it being dismissed or fails to appear in support of the application on the day fixed for the hearing;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) if the applicant is not entitled to make the application; or

(d) for any other reason.

(3) An order under sub-rule (1) may be made on such terms as the Court considers appropriate.

(4) If the Court makes a substitution order, the original applicant shall not be entitled to the costs of his application unless the Court otherwise orders.

(5) If the Court makes a substitution order, the application shall be amended accordingly and shall be verified, re-filed and re-served on the debtor and the Official Assignee.

Leave to withdraw application

188. (1) If the applicant applies to the Court for the application to be dismissed, or for leave to withdraw it, he shall, unless the Court otherwise orders, file in Court an affidavit specifying the grounds of the application and the circumstances in which it is made.

(2) If, since the application was filed, any payment has been made to the applicant by way of settlement, in whole or in part, of the liability in respect of which the application was made, or any personal insolvency agreement has been entered into for securing or compounding them, the affidavit shall state—

(a) what dispositions of assets have been made for the purposes of the settlement or personal insolvency agreement; and

(b) whether, in the case of any disposition, it was assets of the debtor himself, or of some other person; and

(c) whether, if it was assets of the debtor, the disposition was made with the approval of, or has been ratified by, the Court and, if so, specifying the relevant Court order.

(3) No order giving leave to withdraw an application shall be given before the application is heard.

Scope of and interpretation for rules 190 to 193

189. (1) Rules 190 to 193 apply to an application by a debtor for a bankruptcy order under section 332 of the Ordinance and for the making of a bankruptcy order on an application under that section.

(2) In the rules referred to in sub-rule (1), unless the context otherwise requires, "application" means a debtor's application for a bankruptcy order under section 332 of the Ordinance.

Form of application

190. (1) An application shall be dated and signed by the debtor and shall state—

(a) his name;

(b) his residential address;

(c) his occupation, if any;

(d) the nature of his business, the address at which he carries on the business and whether he carries on the business alone or with others; and

(e) any names, other than the one stated under paragraph *(a)*, by which he is or was known or by which he carries or has carried on any business.

(2) The title of the proceedings shall be determined by the particulars given under sub-rule (1)*(a)* and *(e)*.

(3) The debtor shall state in his application which of the grounds for making a bankruptcy order specified in section 330(1) of the Ordinance apply to him.

Admission of insolvency

191. (1) An application shall contain a statement that the debtor is unable to pay his debts as they fall due, an explanation as to the cause of his insolvency and a request that a bankruptcy order be made against him.

(2) If, within the period of five years prior to the date that the application is filed, the debtor has had a bankruptcy order made against him, or has made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs or has entered into a personal insolvency agreement under Part XI of the Ordinance, particulars of these matters shall be given in the application.

(3) If, at the date of the filing of the application a personal insolvency agreement under Part XI of the Ordinance is in force, the particulars required under sub-rule (2) shall contain a statement to this effect and the name and address of the supervisor of the personal insolvency agreement.

Filing of application

192. (1) Application for a bankruptcy order is made by filing at Court an application to comply with the Rules, together with—

(a) three copies of the application for sealing;

(b) an affidavit in support of the application made by the debtor complying with sub-rule (2); and

(c) the verified statements of his assets and liabilities required by section 332(2) of the Ordinance and two additional copies.

(2) The following documents shall be exhibited to the affidavit in support of an application—

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

(3) The Court shall—

(a) return a sealed copy of the application to the applicant; and

(b) send a sealed copy of the application and a copy of the verified statements of assets and liabilities to the Official Assignee.

Application when personal insolvency agreement in place

193. (1) If an application is made by the debtor at a time when a personal insolvency agreement under Part XI of the Ordinance is in force between himself and his creditors, he shall serve a copy of the application on the supervisor.

(2) If the debtor proposes the supervisor as his trustee, within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor—

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he be appointed bankruptcy trustee; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Scope

194. The rules relating to bankruptcy orders apply whether the order is made on the application of a creditor, the debtor or a supervisor.

Drawing and content of bankruptcy order

195. (1) A bankruptcy order shall be drawn by the Court.

(2) A bankruptcy order shall—

(a) state the date that the application on which the order is made was filed;

(b) state the date of the making of the order; and

(c) contain a notice requiring the bankrupt forthwith after the service of the order on him to attend on the trustee at the time and place stated in the order.

(3) If the debtor is represented by a legal practitioner, the bankruptcy order shall be endorsed with the name, address and telephone number of the legal practitioner and any reference.

Service of bankruptcy order

196. (1) The Court shall, forthwith on making a bankruptcy order, give notice to the trustee of his appointment and send three sealed copies of the order to him as soon as is practicable.

(2) The trustee shall, forthwith on receiving the sealed copies of the bankruptcy order from the Court, send one copy to the bankrupt and one copy to the Official Assignee.

Advertisement of bankruptcy order and stay

197. (1) The trustee shall, within ten days of receiving sealed copies of the bankruptcy order from the Court, advertise the Order.

(2) The advertisement shall state the name and address of the person appointed as trustee.

(3) The Court may, on the application of the bankrupt or a creditor, order the trustee not to advertise a bankruptcy order pending a further order of the Court.

(4) An application for a stay of advertisement shall be supported by an affidavit setting out the grounds on which the application is made.

(5) The applicant for an order under sub-rule (3) shall serve a sealed copy of the order, if made, on the trustee and on the Official Assignee.

Amendment of title of proceedings

198. (1) At any time after the making of a bankruptcy order, the trustee may apply to the Court for an order amending the title of the proceedings.

(2) The Court may include in an order under sub-rule (1), directions for the service and advertisement of a notice of the amendment.

Application for appointment of interim receiver

199. (1) An application for an order under section 341(1) of the Ordinance, shall propose an eligible insolvency practitioner or the Official Assignee for appointment as interim receiver.

(2) If the Official Assignee is proposed for appointment, he shall be given sufficient notice of the hearing to enable him to attend the hearing.

(3) An application referred to in sub-rule (1) shall be supported by an affidavit stating—

(a) the grounds upon which the application is being made;

(b) if the proposed appointee is not the Official Assignee, that he has consented to act and, to the best of the applicant's belief is eligible to act as an insolvency practitioner in relation to the debtor;

(c) whether, to the applicant's knowledge, there has been proposed or is in force for the debtor a personal insolvency agreement under Part XI of the Ordinance;

(d) the applicant's estimate of the value of the assets in respect of which the appointment is to be made; and

(e) if the Official Assignee is proposed for appointment, whether and in what manner he has been given notice of the application.

Hearing of application

200. (1) If the Official Assignee is proposed to be appointed as interim receiver, he is entitled to attend the hearing and make such representations as he considers appropriate.

(2) The Court shall not appoint the Official Assignee unless he has been given notice of the application in accordance with rule 199(2).

Order appointing interim receiver

201. (1) An order appointing an interim receiver under section 341(1) of the Ordinance shall state the nature and a short description of the assets of which the person appointed is to take control, and the duties to be performed by him in relation to the debtor's affairs.

(2) The Court shall, forthwith on making an order under section 341(1) of the Ordinance, give notice to the person appointed interim receiver of his appointment and, as soon as is practicable send two sealed copies of the order to him.

(3) The person appointed by the Court shall, as soon as practicable, send one copy of the sealed order to the debtor.

Duties of bankrupt with respect to after acquired property

202. (1) If the bankrupt disposes of property before giving the notice required by section 352 of the Ordinance, he shall forthwith disclose to the trustee the name and address of the person to whom he disposed of the assets and provide any other information which may be necessary to enable the trustee to trace the assets and recover them for the estate.

(2) If the bankrupt gives the trustee notice of assets acquired by or devolving upon him, he shall not, without the trustee's consent in writing, dispose of the assets within the period of forty-two days beginning with the date of the notice.

(3) Subject to sub-rule (4), sub-rules (1) and (2) do not apply to assets acquired by the bankrupt in the ordinary course of a business carried on by him.

(4) If the bankrupt carries on a business, he shall, at least once in each six month period, provide to the trustee information with respect to the business, showing the total value of goods bought and sold or, as the case may be, services supplied, and the profit or loss arising from the business.

(5) When sub-rule (4) applies, the trustee may by a notice in writing, require the bankrupt to provide such further details of the business, including accounts, as are specified in the notice.

Action against person to whom bankrupt disposed assets

203. (1) If assets have been disposed of by the bankrupt, before giving the notice required by rule 202(2) or in contravention of that rule, the trustee may serve notice on the person to whom the assets were disposed of, claiming the property as part of the estate by virtue of section 354(2) of the Ordinance.

(2) The trustee's notice under this rule shall be served within twenty-eight days of his becoming aware of the identity of the person to whom the bankrupt disposed of the assets and an address at which he can be served.

Expenses of acquiring title to after-acquired assets

204. Any expenses incurred by the trustee in acquiring title to after-acquired assets shall be paid out of the estate, in the prescribed order of priority.

Purchase of replacement property for items of excess value

205. (1) A purchase of replacement assets under section 355(3) of the Ordinance may be made either before or after the realisation by the trustee of the value of the assets vesting in him under that section.

(2) The trustee is under no obligation, by virtue of section 355 of the Ordinance, to apply funds to the purchase of a replacement for assets vested in him, unless and until he has sufficient funds in the estate for that purpose.

Application for order

206. (1) An application by the trustee for an income payments order under section 358 of the Ordinance is made by filing with the Court an application together with a statement of the grounds upon which the application is made.

(2) The trustee shall send a notice of the application to the bankrupt not less than twenty-eight days before the day fixed for the hearing of the application, together with sealed copies of the documents filed with the Court.

(3) A notice sent to the bankrupt under sub-rule (2) shall state that—

(a) unless at least seven days before the date fixed for the hearing the bankrupt sends to the Court and to the trustee written consent to an order being made in the terms of the application, he is required to attend the hearing; and

(b) if he attends, he will be given an opportunity to show cause why the order should not be made, or an order should be made otherwise than as applied for by the trustee.

Notice of order

207. If the Court makes an income payments order, the trustee shall, forthwith after the order is made, send a sealed copy of the order—

(a) to the bankrupt; and

(b) if the order is made under section 358(3)*(b)* of the Ordinance, to the person to whom the order is directed.

Order to make payment to trustee

208. (1) If a person receives notice of an income payments order under section 358(3)*(b)* of the Ordinance, with reference to income otherwise payable by him to the bankrupt, he shall make the necessary arrangements for immediate compliance with the order.

(2) The trustee may, by written notice, authorise a person making payments to him in accordance with an order under section 358(3)*(b)* of the Ordinance to deduct and retain such fee as may be specified in the notice towards the clerical and administrative costs of compliance with the order.

(3) The trustee shall send a copy of any notice under sub-rule (2) to the bankrupt.

(4) If a person receives notice of an income payments order imposing on him a requirement under section 358(3)*(b)* of the Ordinance, he shall forthwith give notice to the trustee if—

(a) he is no longer liable to make to the bankrupt any payment of income; or

(b) having made payments in compliance with the order, he ceases to be so liable.

Variation or discharge of order

209. (1) The trustee or the bankrupt may apply to the Court to vary or discharge an income payments order.

(2) Subject to sub-rules (5) and (6), if the application is made by the trustee, rule 206 applies to an application under this rule with such modifications as are necessary.

(3) A bankrupt shall make application under sub-rule (1) by filing with the Court an application, a statement of the grounds upon which it is made and any affidavit that he intends to rely on.

(4) The bankrupt shall send sealed copies of the application, the statement of grounds and any affidavit filed with the Court to the trustee not less than twenty-eight days before the day fixed for the hearing of the application.

(5) If an income payments order is made under section 358(3)*(a)* of the Ordinance, and the bankrupt does not comply with it, the trustee may apply to the Court for the order to be varied, so as to take effect under section 358(3)*(b)* of the Ordinance as an order to the person making the payment.

(6) The trustee's application under sub-rule (1) may be made *ex parte*.

(7) When an application under this rule is made by the bankrupt, the trustee may, not less than seven days before the date fixed for the hearing, file a written report of any matters which he considers ought to be drawn to the Court's attention.

(8) The trustee shall, as soon as reasonably practicable after filing a report under sub-rule (7) send a sealed copy to the bankrupt.

(9) If the Court makes an order under this rule, the trustee shall, forthwith after the order is made, whether on his application or on the application of the bankrupt, send a sealed copy of the order or variation or discharge—

(a) to the bankrupt; and

(b) if the order is made under sub-rule (5) or the order varies or discharges an order made under section 358(3)*(b)* of the Ordinance, to the person making the payment.

Appointment of trustee by Court

210. (1) If the Court appoints a trustee, it shall as soon as reasonably practicable after the date of the order, send two sealed copies of the order to the trustee who shall send one copy to the Official Assignee.

(2) The trustee's appointment takes effect from the date of the order.

(3) A bankruptcy trustee shall advertise his appointment—

(a) as specified in rule 306(1); and

(b) in a newspaper published and circulating in the Islands.

Authentication of trustee's appointment

211. A sealed copy of the Court's order appointing a person as trustee of a bankrupt may, in any proceedings, be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of trustee in relation to the bankruptcy.

Removal of trustee

212. (1) Application for the removal of a trustee under section 368 of the Ordinance is made by filing at Court—

(a) an application stating the grounds upon which the removal of the trustee is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the trustee and the Official Assignee, unless it is his application, not less than ten days before the date fixed for the hearing.

(3) The trustee may file affidavit evidence in opposition to the application not less than four days before the date fixed for the hearing of the application.

(4) The trustee shall, not less than four days after being served with an application under sub-rule (2) send to the Official Assignee a statement as to whether any of the bankrupt's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—

(a) the nature, value and location of the assets;

(b) any action taken by the trustee to deal with the assets or his reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a trustee shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the trustee on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove a trustee are not payable out of the bankrupt's estate.

(8) If the Court removes a trustee under section 368 of the Ordinance, it shall send a copy of the order removing him to—

(a) the trustee removed;

(b) any remaining trustee; and

(c) the Official Assignee.

Resignation of trustee, no longer eligible to act

213. (1) If the trustee resigns under section 369(1)*(a)* of the Ordinance, he shall send the Official Assignee with the notice of his resignation, a statement covering the matters specified in rule 212(4).

(2) The trustee shall, if so directed by the Official Assignee, verify the statement by affidavit.

Resignation of trustee for other reason

214. (1) Unless the trustee is a joint trustee resigning in accordance with section 369(3) of the Ordinance, the notice of a creditors' meeting sent to creditors in accordance with section 369(4) of the Ordinance shall be accompanied by an account of the trustee's administration of the bankruptcy, including a summary of his receipts and payments.

(2) The trustee shall, not less than seven days before the date fixed for the creditors' meeting, send a copy of the notice and account referred to in sub-rule (1) and a statement covering the matters specified in rule 212(4) to the Official Assignee and file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 369(4) of the Ordinance a resolution is passed accepting the trustee's resignation, the chairman shall, forthwith, send the Official Assignee a copy of the resolution signed by the chairman.

(4) If a trustee's resignation is accepted by the creditors, the trustee shall forthwith—

(a) send a notice of his resignation to the Official Assignee; and

(b) file a notice of his resignation with the Court.

(5) The trustee's resignation is effective from the date that the notice of his resignation is received by the Official Assignee, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former trustee.

Leave to resign

215. (1) A trustee shall, not less than seven days before the date fixed for the hearing of an application for leave to resign under section 369(6) of the Ordinance, give notice of his application to—

(a) any joint trustee;

(b) the creditors' committee; if any; and

(c) the Official Assignee.

(2) If the Court gives the trustee leave to resign, it may make such provision as it considers appropriate with respect to matters arising in connection with his resignation.

(3) If the Court gives the trustee leave to resign, section 368(3) of the Ordinance applies with such modifications as are necessary.

(4) The Court shall send two sealed copies of the order to the trustee, who shall forthwith send one of the copies to the Official Assignee.

(5) Within fourteen days of his resignation, the former liquidator shall send a notice of his resignation to the Official Assignee.

Death of trustee

216. (1) If the trustee dies, his personal representative shall give notice of his death to the Official Assignee, specifying the date of his death, unless notice has already been given to the Court and the Official Assignee under sub-rules (2) or (3).

(2) If a trustee who dies was a partner in a firm, notice of his death may be given to the Official Assignee and the Court by a partner in the firm.

(3) Notice of the death of a trustee may be given by any person producing to the Court and the Official Assignee the relevant death certificate or a copy of it.

(4) When the Official Assignee receives a notice under sub-rule (3) and the deceased trustee was the sole trustee of the bankrupt, the Official Assignee shall, as soon as reasonably practicable, apply to the Court under section 370(1) of the Ordinance for the appoint of a replacement trustee, unless an application has already been made by the creditors' committee.

Advertisement of appointment

217. (1) A trustee who is appointed to replace a trustee who has, for whatever reason, ceased to hold office, shall within twenty-one days of the date of his appointment, advertise his appointment.

(2) His advertisement shall state that he has been appointed in place of a trustee who has ceased to hold office.

Solicitation

218. (1) If the Court is satisfied that any improper solicitation has been used by or on behalf of a trustee in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the trustee out of the assets of the estate.

(2) An order of the Court under sub-rule (1) overrides any resolution of the creditors' committee or any other provision of the Rules.

Meeting of creditors

219. (1) This rule applies to a creditors' meeting called under Part XII of the Ordinance.

(2) The trustee shall give the bankrupt not less than fourteen days' notice of a creditors' meeting.

(3) If a creditors' meeting is adjourned, the chairman of the meeting shall give notice of the fact to the bankrupt, unless—

(a) the bankrupt was present at the meeting; or

(b) the chairman considers it to be unnecessary or impracticable to give notice to the bankrupt.

(4) The chairman of a creditors' meeting may admit the bankrupt or any other person to the meeting, if he has given reasonable notice of his wish to be present at the meeting.

(5) The chairman's decision is final as to what, if any, intervention may be made by the bankrupt, or by any other person, admitted to the meeting under this sub-rule.

(6) If the bankrupt is not present at a creditors' meeting, and it is desired to put questions to him, the chairman may adjourn the meeting with a view to obtaining his attendance.

(7) When the bankrupt is present at a creditors' meeting, only such questions may be put to him as the chairman may in his discretion allow.

Trustee's duty to report to Official Assignee and creditors

220. (1) Unless otherwise directed by the Official Assignee, a trustee shall at the end of every six months file with the Court and send to the Official Assignee and the creditors' committee, if any, a written report stating—

(a) the receipts and payments for the period;

(b) details of the assets realised and the assets remaining unrealised during the period and the reasons why the assets remaining unrealised have not been realised;

(c) the progress of his administration of the bankrupt's estate and any matters in connection with his administration which he considers should be drawn to the Official Assignee's attention; and

(d) such other information as the Official Assignee may require.

(2) If a creditors committee is not appointed, the report referred to in sub-rule (1) shall be sent to each creditor.

Claims by unsecured creditors

221. A claim made against a bankrupt by an unsecured creditor under section 376 of the Ordinance shall be in the approved form and shall specify—

(a) the name and address of the creditor;

(b) the total amount of his claim at the date of the bankruptcy order;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the bankrupt;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself.

Claim forms

222. (1) Unless the Court otherwise orders, the trustee shall send a claim form to each creditor of whom he is aware at the same time as he sends the creditor notice of his appointment under section 366 of the Ordinance.

(2) The trustee shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 366 of the Ordinance.

Application to Court to expunge or amend an admitted claim

223. The applicant for an order expunging or reducing a claim under section 377 of the Ordinance shall serve a copy of his application—

(a) in the case of an application by the trustee, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the trustee and on the creditor who submitted the claim.

Negotiable instruments

224. The trustee may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the trustee.

Inspection of claims

225. The trustee shall allow claims in his custody or control to be inspected by—

(a) a creditor who has submitted a claim in the bankruptcy that has not been wholly rejected by the trustee;

(b) the bankrupt;

(c) a person acting on behalf of a person referred to in paragraph *(a)* or *(b)*.

Distribution of dividend

226. If the trustee distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Final meeting

227. (1) The trustee shall call a final meeting under section 389 of the Ordinance by sending a notice of the meeting, together with his final report, to all creditors not less than twenty-eight days before the date fixed for the meeting.

(2) A copy of the notice and report sent to creditors under sub-rule (1) shall, within the same time period, also be sent to the Official Assignee and the bankrupt.

(3) The trustee's final report shall include a summary of his receipts and payments.

(4) At the final meeting, the creditors may question the trustee with respect to any matter contained in his report or concerning his administration of the bankrupt's estate.

(5) As soon as reasonably practicable after the final meeting has been held, the trustee shall send to the Official Assignee and file with the Court a notice that the meeting has been held and shall file a copy of his final report with the Court.

(6) If there is no quorum at the final meeting, the trustee shall report to the Court and the Official Assignee that a final meeting was summoned in accordance with the Rules, but there was no quorum present and the final meeting is then deemed to have been held.

Notice of disclaimer

228. (1) A notice of disclaimer shall contain such details of the property disclaimed as to enable it to be easily identified.

(2) The notice shall be signed by the trustee and filed at Court with a copy.

(3) The Court shall return the sealed copy to the trustee.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the notice of disclaimer was returned to the trustee.

Communication of notice of disclaimer

229. (1) Written notice of a disclaimer notice shall be given under section 398(3) by sending or giving a copy of the sealed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 398(3) of the Ordinance, the following are entitled to receive notice of a disclaimer—

(a) if the property disclaimed is of a leasehold nature, every person who, to the trustee's knowledge, claims under the bankrupt as underlessee or mortgagee;

(b) if the disclaimer is of property in a dwelling house, every person who, to the trustee's knowledge, is in occupation of, or claims a right to occupy, the house;

(c) every person who, to the trustee's knowledge—

(i) claims an interest in the disclaimed property; or

(ii) is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(d) if the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a trustee that a person's rights are affected by a disclaimer, the trustee shall forthwith given written notice of the disclaimer to that person in accordance with this rule unless—

(a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A disclaimer notice required to be given to a person under the age of eighteen years in relation to the disclaimer of property in a dwelling house is sufficiently given if given to the parent or guardian of that person.

(5) A trustee disclaiming property may at any time, in addition to his obligations under the Ordinance and the Rules, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

Duty to keep Court informed

230. The trustee shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Ordinance and the Rules, specifying the name and address of each person and his interest in the property disclaimed.

Notice to elect

231. (1) A notice to elect shall be served on a trustee by delivering the notice to him personally or sending it to him by registered post.

(2) If property cannot be disclaimed by the trustee without the leave of the Court, if the trustee applies to the Court for leave to disclaim within the twenty-eight day period specified in section 400(2) of the Ordinance, the Court shall extend the time allowed by that section for giving notice of disclaimer to a date not earlier than the date of the application.

Application for leave to disclaim

232. (1) If the trustee requires the leave of the Court to disclaim property claimed for the bankrupt's estate under section 354 or 355 of the Ordinance, he may apply for that leave *ex parte*.

(2) An application under sub-rule (1) shall be accompanied by a report—

(a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified;

(b) setting out the reasons why, the property having been claimed for the estate, the Court's leave to disclaim is now applied for; and

(c) specifying the persons, if any, who have been informed of the trustee's intention to make the application.

(3) If the report states that any person's consent to the disclaimer has been signified, a copy of that consent shall be annexed to the report.

(4) The Court may, on consideration of the application, grant the leave applied for and it may, before granting leave—

(a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 402 of the Ordinance; and

(b) fix a venue for the hearing of the application for leave under section 401(2) of the Ordinance.

Notice to declare interest in onerous property

233. (1) If it appears to the trustee that a person may have an interest in onerous property, he may give notice to that person to declare, within fourteen days, whether he claims any interest in the property and, if so, the nature and extent of his interest.

(2) If a person fails to comply with a notice given under sub-rule (1), the trustee is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

Application for vesting order or order for delivery

234. (1) An application for a vesting order or an order for delivery under section 402 of the Ordinance shall be made within three months of the earlier of—

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the trustee.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the trustee and an affidavit—

(a) stating whether his claim is based upon—

(i) an interest in the disclaimed property;

(ii) an undischarged liability; or

(iii) the occupation of a dwelling house;

(b) specifying the date upon which he received a copy of the trustee's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 402 of the Ordinance.

(3) The Court shall return a sealed copy of the application to the applicant.

(4) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the trustee—

(a) a copy of the sealed application; and

(b) a copy of the affidavit filed in support.

(5) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the trustee.

(7) Unless there is one or more applications pending under—

(a) section 399(2) of the Ordinance, in a case when the property disclaimed is of a leasehold nature; or

(b) section 399(4) of the Ordinance, in a case when the property disclaimed is property in a dwelling house,

and section 399(2) or 399(4) of the Ordinance, as the case may be, apply to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Statement of assets and liabilities

235. (1) The statement of assets and liabilities required—

(a) to be filed by a debtor under section 332(2) of the Ordinance together with his application for a bankruptcy order; and

(b) to be submitted by a bankrupt under section 405(1) of the Ordinance,

shall be in the approved form and shall contain the information required by the form.

(2) Without limiting sub-rule (1), a statement of assets and liabilities shall set out—

(a) the assets and liabilities of the debtor or bankrupt;

(b) the names and addresses of the creditors of the debtor or bankrupt; and

(c) the security interests held by creditors of the debtor or bankrupt and the dates upon which the security interests were created.

Scope of rules 237 to 240

236. Rules 237 to 240 apply in respect of a statement of assets and liabilities required to be submitted by a bankrupt under section 405(1) of the Ordinance.

Submission and filing of verified statement

237. (1) The trustee of a bankrupt shall provide the bankrupt with the forms required to complete the statement of assets and liabilities together with instructions for completing the forms.

(2) The bankrupt shall verify his statement of assets and liabilities by affidavit and submit it to the trustee together with one copy.

(3) The trustee shall file the verified statement of assets and liabilities in Court.

Release from duty to submit statement of assets or liabilities and extension of time

238. (1) A bankrupt may request the trustee—

(a) to release him from his obligation to submit a statement of assets and liabilities; or

(b) for an extension of time for submitting the statement,

under section 405(3) of the Ordinance.

(2) The trustee may grant the bankrupt a release or an extension of time under section 405(3) of the Ordinance at his own discretion, without having received a request from the bankrupt.

Application to Court if office holder refuses a request under rule 238

239. (1) If the trustee refuses a request made under rule 238, the bankrupt may apply to the Court for an order granting him the release or the extension.

(2) The bankrupt shall give the trustee at least ten business days' notice of an application under sub-rule (1) and of any affidavit filed in support of his application.

(3) The trustee is entitled to appear and make representations at the hearing of an application under sub-rule (1) and, whether or not he appears, to file with the Court a written report setting out any matters that he considers should be brought to the attention of the Court.

(4) The trustee shall send the bankrupt a copy of a report filed under sub-rule (3) at least five business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the bankrupt's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made out of his estate.

(6) The Court shall send sealed copies of an order made under this rule to the trustee and to the bankrupt.

Expenses of statement of assets and liabilities

240. (1) If the bankrupt is unable to prepare a statement of assets and liabilities himself, the trustee may, at the expense of the estate—

(a) employ a person to assist the bankrupt in the preparation of the statement; or

(b) authorise an allowance payable out of the estate towards expenses to be incurred by the bankrupt in employing a person approved by the trustee to assist the bankrupt in preparing the statement.

(2) A request by the bankrupt for an authorisation under sub-rule (1)*(b)* shall be accompanied by an estimate of the expenses involved.

(3) An authorisation given by the trustee under this rule shall be subject to such conditions, if any, as he considers appropriate with respect to the manner in which any person may obtain access to relevant books and papers.

(4) Nothing in this rule relieves the bankrupt from any obligation with respect to the preparation, verification and submission of his statement of assets and liabilities, or to the provision of information to the Official Assignee or the trustee.

Report when statement of assets and liabilities submitted

241. (1) When the bankrupt submits a statement of assets and liabilities under section 405(1) of the Ordinance, the trustee shall send to creditors a report containing a summary of the statement and such observations, if any, as he considers it appropriate to make with respect to it or to the bankrupt's affairs generally.

(2) The trustee need not comply with sub-rule (1) if he has previously reported to creditors with respect to the bankrupt's affairs, so far as known to him, and he is of opinion that there are no additional matters which ought to be brought to their attention.

Statement of affairs dispensed with

242. (1) If the bankrupt has been released from the obligation to submit a statement of affairs, the trustee shall, as soon as reasonably practicable, send to creditors a report containing a summary of the bankrupt's assets and liabilities and affairs, so far as within his knowledge, and such observations, if any, as he considers it would be appropriate for him to make.

(2) The trustee need not comply with sub-rule (1) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Application for examination

243. (1) An application to the Court under section 407(1) of the Ordinance for the examination of a bankrupt shall state whether the Official Assignee or the trustee seeks the examination to be held in public or in private.

(2) The Official Assignee or trustee shall, together with the application, file with the Court a statement setting out—

(a) the person or persons sought to be examined;

(b) a general description of the matters upon which the person will be examined;

(c) if the person sought to be examined is not the bankrupt or the bankrupt's spouse, the grounds for the application;

(d) whether any further orders or directions are sought under section 408(3) or (6) of the Ordinance.

(3) Unless the Court gives a direction under section 408(6)*(a)* of the Ordinance, the matters upon which the examinee may be examined are not limited to the matters stated in the application in accordance with sub-rule (2).

Advertisement of order

244. If the Court makes an order for the public examination of a bankrupt—

(a) it may give directions for the advertisement of the order; and

(b) if it does not give such directions, the Official Assignee or the trustee, as the case may be, may advertise the order in such manner as he considers appropriate.

Application required by creditors

245. (1) A notice to the trustee under section 407(4) of the Ordinance shall be in writing and shall be accompanied by—

(a) a list of the creditors concurring with the notice and the amount of their respective claims in the bankruptcy;

(b) written confirmation of each creditor's concurrence with the notice; and

(c) a statement of the reasons why the creditors require the trustee to make application for the examination of the bankrupt.

(2) The trustee shall not make an application as required by the creditors unless there is deposited with him such sum as he determines to be appropriate by way of security for the expenses of the hearing of the examination, if ordered.

(3) Within twenty-eight days of receiving a notice under section 407(4) of the Ordinance, the documents specified in sub-rule (1) and the security deposit, the trustee shall apply to the Court for the examination of the bankrupt.

(4) If the trustee considers that the request is an unreasonable one, he may apply to the Court for an order relieving him from the obligation to make the application.

(5) If the Court makes an order under sub-rule (4), and the application for the order was made *ex parte*, the trustee shall, as soon as reasonably practicable after the order is made, give notice of the order to the creditors named in the notice.

Record of examination

246. (1) A written record shall be kept of an examination.

(2) The record shall be read either to or by the examinee and signed by him.

(3) The Court may order that the examinee verify the written record of the examination by affidavit.

Adjournment of examination

247. (1) An examination may be adjourned by the Court either to a fixed date or generally.

(2) Without limiting sub-rule (1), the Court shall adjourn an examination if criminal proceedings have been instituted against the examinee and the Court is of opinion that the continuance of the hearing would prejudice a fair trial of those proceedings.

(3) If an examination is adjourned generally, the Court may at any time on the application of the trustee, the Official Assignee or the bankrupt—

(a) fix a venue for the resumption of the examination; and

(b) give such directions concerning the examination as it considers appropriate.

Costs of an examination

248. (1) The costs and expenses incurred by an examinee or by a creditor in connection with an examination, including the costs of representation by a legal practitioner, shall be borne by him and shall not be payable out of the bankrupt's estate as a cost of the bankruptcy.

(2) Subject to sub-rule (3), the costs of the trustee and, if appropriate, the Official Assignee in connection with an examination ordered are a cost of the bankruptcy and shall be paid out of the bankrupt's estate in accordance with the prescribed priority.

(3) If an examination of the bankrupt has been ordered by the Court on a requisition of the creditors under section 407(4) of the Ordinance, the Court may order that the expenses of the examination are to be paid, as to the whole or a specified proportion, out of the deposit under rule 245(2), instead of out of the estate.

Automatic discharge

249. (1) This rule applies to an application made by the Official Assignee or the trustee under section 414(2) of the Ordinance.

(2) An affidavit, or in the case of the Official Assignee, a report stating the grounds upon which the application is made shall be filed together with the application.

(3) A copy of the endorsed application, together with the affidavit or report in support, shall be sent to the persons specified in sub-rule (4) so as to reach them at least twenty-one days before the date fixed for the hearing.

(4) The following persons are entitled to be given notice of the application—

(a) the bankrupt;

(b) when the applicant is the Official Assignee and he is not the bankruptcy trustee, the bankruptcy trustee; and

(c) if the applicant is the bankruptcy trustee (not being the Official Assignee), the Official Assignee.

(5) The bankrupt may, not later than seven days before the date of the hearing, file with the Court an affidavit specifying any statements in the applicant's affidavit or report which he intends to deny or dispute.

(6) An affidavit filed under sub-rule (5) shall be sent to the Official Assignee and the bankruptcy trustee, if different, not less than four days before the date of the hearing.

(7) If, on the hearing of the application, the Court makes an order under section 414(2) of the Ordinance, the applicant shall serve a copy on each person entitled to receive notice of the application under sub-rule (4).

Application concerning order for suspension of discharge

250. (1) This rule applies to an application made by the bankrupt under section 415 of the Ordinance.

(2) The bankrupt shall, together with the application, file an affidavit stating the grounds upon which the application is made.

(3) A copy of the endorsed application, together with the affidavit in support, shall be sent to the Official Assignee and the trustee, if different, so as to reach them at least twenty-eight days before the date fixed for the hearing.

(4) The Official Assignee and the bankruptcy trustee, if different—

(a) may file with the Court a report of any matters which he considers ought to be drawn to the Court's attention; and

(b) may appear and be heard on the bankrupt's application.

(5) If the Court's order under section 415(2) of the Ordinance was for the period for automatic discharge to cease to run until the fulfilment of specified conditions, the Court may request a report from the Official Assignee or the bankruptcy trustee as to whether those conditions have or have not been fulfilled.

(6) If an affidavit is filed under sub-rule (4) or a report is filed under sub-rule (5), copies shall be sent to the bankrupt and the Official Assignee or the bankruptcy trustee, as the case may be, not later than fourteen days before the hearing.

(7) The bankrupt may, not later than seven days before the date of the hearing, file with the Court an affidavit specifying any statements in the report or affidavit referred to in sub-rule (6) which he intends to deny or dispute.

(8) An affidavit filed under sub-rule (7) shall be sent to the Official Assignee and the trustee, if different, not less than 4 days before the date of the hearing.

(9) If, on the bankrupt's application, the Court discharges the order under section 414(2) of the Ordinance it shall issue a certificate to the bankrupt stating that it has done so, with effect from a specified date and the bankrupt shall send copies of the certificate to the Official Assignee and the trustee, if different.

Application for discharge

251. (1) An application by a bankrupt for his discharge under section 416 of the Ordinance shall state whether the application is made under subsection (1)*(a)* or (1)*(b)* of that section.

(2) If a bankrupt makes an application for his discharge under section 416 of the Ordinance, he shall deposit with the Official Assignee such sum as the Official Assignee reasonably requires to comply with his obligations under sub-rule (3).

(3) Subject to sub-rule (5), upon receiving an application for discharge by the Court, the Official Assignee shall give notice of the application to every creditor who, to the Official Assignee's knowledge, has a claim outstanding against the estate which has not been satisfied.

(4) Notices under sub-rule (3) shall be given not later than fourteen days before the date fixed for the hearing of the bankrupt's application.

(5) If the bankrupt fails to comply with sub-rule (2)—

(a) the Official Assignee is not obliged to give notice under sub-rule (3); and

(b) the Court shall not make an order discharging the bankrupt.

Report of Official Assignee

252. (1) If the bankrupt makes an application for his discharge under section 416 of the Ordinance, the bankruptcy trustee shall file an affidavit, and the Official Assignee may file a report, at least twenty-one days before the date fixed for the hearing of the application as to—

(a) whether paragraphs *(a)* to *(j)* in section 417(4) of the Ordinance, or any of them, apply to the bankrupt and, if so, providing particulars; and

(b) any other matters that the trustee and the Official Assignee consider should be brought to the attention of the Court.

(2) A copy of the affidavit and report filed under sub-rule (1) shall be sent to the bankrupt at least fourteen days before the date fixed for the hearing of the application.

Application for annulment

253. An application to the Court under section 420(1) of the Ordinance for the annulment of a bankruptcy order shall specify under which paragraph of section 420(1) it is made and shall be supported by an affidavit stating the grounds on which it is made.

Notice of application and other documents

254. (1) Notice of an application under section 420(1) of the Ordinance shall be given—

(a) to the trustee and, if he is not the trustee, to the Official Assignee;

(b) if the application is made under section 420(1)*(a)* of the Ordinance, to the person on whose application the bankruptcy order was made; and

(c) if the applicant is not the bankrupt, to the bankrupt.

(2) Any notice required to be given, or document sent, under the rules in this Part relating to annulment to the trustee, shall also be given or sent, if he is not trustee, to the Official Assignee within the time periods specified in the relevant rule.

(3) Any notice required to be given, or document sent, under the rules in this Part relating to annulment to the trustee or any other person shall also be given, if he is not the applicant, to the bankrupt within the time periods specified in the relevant rule.

Report by trustee

255. (1) If the application is made under section 420(1)*(b)* of the Ordinance, not less than twenty-one days before the date fixed for the hearing, the trustee shall file with the Court a report with respect to the following matters—

(a) the circumstances leading to the bankruptcy;

(b) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the application;

(c) details of the bankrupt's creditors who are known to him to have claims, but have not submitted them; and

(d) such other matter as the person making the report considers would assist the Court in making a decision on the application.

(2) The report filed under sub-rule (1) shall include particulars of the extent to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured and, in so far as the debts and expenses of the bankruptcy are unpaid but secured, the person making the report shall state in it whether and to what extent he considers the security to be satisfactory.

(3) A copy of the report shall be sent to the applicant at least fourteen days before the date fixed for the hearing.

(4) The applicant for an order annulling the bankruptcy may, if he wishes, file further affidavits in reply to the trustee's report.

(5) The applicant shall send a copy of any affidavit sworn under sub-rule (4) to the trustee.

(6) When the Official Assignee is not the trustee, he may file a report with the Court, a copy of which shall be sent to the applicant at least seven days before the hearing.

Power of Court to stay proceedings

256. (1) The Court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this rule may be made *ex parte*.

(3) When application is made under this rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant shall send a copy of the application to the trustee in sufficient time to enable him to be present at the hearing and to make any representations he may wish to make.

(4) When the Court makes an order under this rule staying all or any part of the proceedings in the bankruptcy, the rules in this Part in connection with an annulment continue to apply.

(5) If the Court makes an order under this rule, it shall send copies of the order to the applicant and to the trustee.

Notice to creditors who have not submitted a claim

257. If an application for annulment is made under section 419(1)*(b)* of the Ordinance and the trustee reports under rule 255 that there are creditors of the bankrupt who have not submitted a claim, the Court may—

(a) direct the trustee to send notice of the application to such of those creditors as the Court thinks ought to be informed of it, with a view to their submitting a claim for their debts within twenty-one days;

(b) direct the trustee to advertise the application so that creditors who have not submitted a claim may do so within a specified time; and

(c) adjourn the application, for a period of not less than thirty-five days.

The hearing

258. (1) The trustee shall attend the hearing of the application.

(2) If he is not trustee, the Official Assignee may but is not required to attend unless he has filed a report under rule 255(6).

(3) If the Court makes an order on the application, it shall send copies of the order to the applicant and the trustee and to the Official Assignee, if he is not the trustee.

Security to be provided by bankrupt

259. (1) This rule applies to an application made under section 420(1)*(b)* of the Ordinance.

(2) If a debt is disputed, or a creditor who has submitted a claim can no longer be traced, the Court shall not annul the bankruptcy unless the bankrupt has given such security, in the form of money paid into court, or a bond entered into with approved sureties, as the Court considers adequate to satisfy any sum that may subsequently be found to be due to the creditor concerned together with, if the Court considers it appropriate, costs.

(3) If under sub-rule (2), security has been given in the case of an untraced creditor, the Court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it considers appropriate.

(4) If advertisement is ordered under this sub-rule, and no claim on the security is made within two months from the date of the advertisement, or the first advertisement, if more than one, the Court shall, on application being made to it, order the security to be released.

Notice to creditors

260. (1) If the trustee has notified creditors of the bankruptcy order, and the bankruptcy order is annulled, he shall as soon as reasonably practicable notify them of the annulment.

(2) Expenses incurred by the trustee in giving notice under this rule are a charge in his favour on the assets of the former bankrupt, whether or not actually in his hands.

(3) If any assets is in the hands of any person other than the former bankrupt himself, the trustee's charge is valid subject only to any costs that may be incurred by that other person in effecting realisation of the property for the purpose of satisfying the charge.

Advertisement of annulment

261. (1) If a bankruptcy order is annulled, the former bankrupt may require the Official Assignee to advertise the annulment.

(2) Advertisement of the annulment under sub-rule (1) shall be at the cost of the former bankrupt, and the Official Assignee is not obliged to advertise the annulment until the former bankrupt has paid the costs of advertisement to him.

Trustee's final account

262. (1) The annulment of a bankruptcy order under section 420 of the Ordinance does not operate to release the trustee from any duty or obligation imposed on him by or under the Ordinance or the Rules to account for his transactions in connection with the former bankrupt's estate.

(2) The trustee shall send to the Official Assignee, and file in Court, a copy of his final account as soon as reasonably practicable after the Court's order annulling the bankruptcy order.

(3) The final account shall include a summary of the trustee's receipts and payments in the administration of the former bankrupt's estate.

(4) The trustee is released from such time as the Court may determine, having regard to whether—

(a) sub-rule (2) has been complied with; and

(b) any security given under rule 259(2) has been, or will be, released.

Prescribed priority

263. The following costs and expenses of the bankruptcy shall be paid in the order of priority in which they are listed (the "prescribed priority")—

(a) the costs and expenses properly incurred by the trustee in preserving, realising or getting in the property of the bankrupt or in carrying on the bankrupt's business, including—

(i) the costs and expenses of any legal proceedings which the trustee has brought or defended whether in his own name or in the name of the bankrupt; and

(ii) the costs of and in connection with an examination ordered under section 408 of the Ordinance;

(b) the remuneration of any interim receiver appointed under section 341 of the Ordinance;

(c) the deposit lodged under section 341(3) of the Ordinance;

(d) the costs of the application on which the trustee was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(e) any costs allowed in respect of the preparation of a statement of assets and liabilities;

(f) the cost of and in respect of any creditors' committee appointed in the bankruptcy;

(g) any disbursements properly paid by the trustee;

(h) the remuneration of anyone employed by the trustee;

(i) the remuneration of the trustee;

(j) any other fees, costs, charges or expenses properly incurred in the course of the bankruptcy or properly chargeable by the trustee in carrying out his functions in the bankruptcy.

Register of Bankruptcy Orders

264. (1) The Official Assignee shall maintain a register of bankruptcy orders of which he receives notice under rule 196(1) or (2).

(2) The register of bankruptcy orders shall contain the following information—

(a) the date of the bankruptcy order and the Court reference number;

(b) the name and any former name, gender, occupation (if any) and date of birth of the bankrupt;

(c) the bankrupt's last known address;

(d) if the bankrupt has been an undischarged bankrupt at any time in the period of five years ending with the date of the bankruptcy order in question, the date of the most recent of any previous bankruptcy orders, excluding any bankruptcy order that has been annulled under section 420 of the Ordinance;

(e) any name by which the bankrupt is known other than his true name;

(f) any business or trading names that the bankrupt uses or, during the previous ten years, has used;

(g) the name and address of the bankruptcy trustee;

(h) subject to paragraph *(i)*, if the bankrupt is eligible for automatic discharge under section 414 of the Ordinance, the date on which the bankrupt will be discharged or, if the bankrupt is not eligible for automatic discharge under section 414, a statement to that effect;

(i) if the Court makes an order under section 414(2) of the Ordinance, details of the order together with the revised discharge date, if any;

(j) details of any order made under section 415 of the Ordinance;

(k) the date on which the bankrupt is discharged and any conditions to which the discharge is subject.

(3) If, pursuant to rule 258(3), the Official Assignee is given notice of the making of an annulment order under section 420 of the Ordinance, he shall enter the annulment order in the register of bankruptcy orders.

(4) When the Official Assignee enters a discharge or annulment in the register of bankruptcy orders under this rule, he shall, on the expiry of three years after the date of the discharge or annulment order, delete from the register all information relating to the bankruptcy order.

(5) The register of bankruptcy orders is open to public inspection.

Changes to information entered in the register of bankruptcy orders

265. (1) If the Official Assignee becomes aware that any information which has been entered in the register of bankruptcy orders is inaccurate he shall rectify the information entered in the register.

(2) If the Official Assignee receives notice of the death of a bankrupt in respect of whom bankruptcy information has been entered in the register of bankruptcy orders, he shall cause the date of his death to be entered in the register.

PART X

GENERAL PROVISIONS

Interpretation for rules 268 to 294

266. In 268 to 294—

"convener" means the person calling a creditors' or members' meeting;

"creditors' meeting" means a meeting of creditors required or permitted to be called under the Ordinance or the Rules;

"members' meeting" means a meeting of members required or permitted to be called under the Ordinance or the Rules;

"notice" means a notice calling a creditors' or members' meeting;

"office holder" means—

(a) in the case of a company, a supervisor, interim supervisor, administrator, administrative receiver or liquidator; and

(b) in the case of an individual, a supervisor, interim supervisor or bankruptcy trustee;

"relevant date" means—

(a) in the case of a company arrangement, the date of the creditors' meeting or, if the company is in administration or in liquidation, the date that the administration or liquidation commenced;

(b) in the case of a personal insolvency agreement, the date of the creditors' meeting;

(c) in the case of an administrative receivership, the date of the appointment of the administrative receiver; and

(d) in the case of administration, liquidation or bankruptcy proceedings, the date that the administration, liquidation or bankruptcy commenced.

Scope of provisions of this Part concerning meetings

267. Except to the extent that the Ordinance or the Rules otherwise provide—

(a) rules 268 to 285 apply to all creditors' meetings; and

(b) rule 286 applies to all members' meetings.

Calling of creditors' meetings

268. (1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting a notice complying with the Ordinance and the Rules.

(2) Subject to any requirement of the Ordinance or the Rules, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the venue of a creditors' meeting shall be fixed by the convener and stated in the notice.

(3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside the Islands.

(4) A notice sent to a creditor under sub-rule (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him at least fourteen days before the date of the meeting.

(5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10.00 and 16.00 on a business day.

Form of notice calling creditors' meeting and accompanying documents

269. (1) In addition to any other requirements of the Ordinance or the Rules, a notice shall contain—

(a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and

(b) an explanation as to—

(i) the majority required to pass a resolution at the meeting; and

(ii) the basis on which a person will be admitted to vote at the meeting.

(2) The convener shall send, or cause to be sent, together with every notice—

(a) a proxy form; and

(b) any document required by the Ordinance or the Rules to be sent with the notice.

(3) When a copy of the notice, together with any other documentation, is required by the Ordinance or the Rules to be sent to any person not entitled to vote at the meeting, the convener shall send, or cause to be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least fourteen days before the date of the meeting.

(4) Neither the proceedings at, nor any resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

Notice to be given to creditors

270. (1) The convener of a creditors' meeting shall send a notice to every creditor—

(a) specified in the statement of affairs or statement of assets and liabilities, if any; and

(b) of whom the convener is otherwise aware.

(2) The convener of a creditors' meeting is not in breach of any requirement of the Ordinance or the Rules to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

Notice of meetings by advertisement

271. (1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.

(2) In considering whether to make a direction under this rule, the Court shall have regard to—

(a) the cost of public advertisement;

(b) the assets available in the insolvency proceeding concerned; and

(c) the extent of the interest of creditors or any particular class of either.

Notice to Registrar, Commission and Official Assignee

272. If a convener is required by the Ordinance to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Assignee, he shall file the notice, together with any accompanying documentation, at least fourteen days before the date set for the meeting.

Meetings requisitioned by creditors

273. (1) This rule applies when creditors are permitted by the Ordinance to requisition a meeting.

(2) A notice requisitioning a creditors' meeting shall be sent to the office holder concerned by a creditor accompanied by—

(a) a list of creditors supporting the requisition, showing the amounts of their respective claims;

(b) the written confirmation of each creditor on the list that he supports the requisition; and

(c) a statement—

(i) specifying the section of the Ordinance under which the meeting is requisitioned;

(ii) that the creditors on the list comprise at least the minimum number of creditors specified by the relevant section; and

(iii) of the purpose of the meeting.

(3) Subject to sub-rule (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the office holder in accordance with sub-rule (2).

(4) If the office holder is satisfied that a requisition complies with the Ordinance and the Rules, he shall, within five business days of receiving the notice under sub-rule (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the office holder sufficient security to cover those costs.

(5) If the office holder is not satisfied that a requisition complies with the Ordinance and the Rules, he shall notify the creditor in writing stating the reasons for his conclusion.

(6) Upon receipt of the deposit referred to in sub-rule (4), the office holder shall fix a venue for the meeting not more than thirty-five days from his receipt of the deposit and shall give not less than twenty-one days' notice of the meeting to creditors.

(7) A meeting held under this rule may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.

(8) To the extent that any deposit paid to the office holder under this rule is not required for the payment of the expenses of calling and holding the meeting, it shall be repaid to the person who paid the deposit.

Chairman

274. (1) Subject to sub-rules (2) and (3), every creditors' meeting shall be chaired by the convener.

(2) If the convener is an insolvency practitioner or the Official Assignee and he is unable to attend the meeting, he may, in writing, nominate as chairman—

(a) in the case of an insolvency practitioner—

(i) another eligible insolvency practitioner; or

(ii) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters; or

(b) in the case of the Official Assignee, the Deputy Official Assignee or a member of his staff.

(3) When a creditors' meeting convened by an insolvency practitioner or the Official Assignee is to be held outside the Islands and he will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chairman.

Suspension

275. Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

Adjournment of meetings

276. (1) If within thirty minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chairman of the meeting, the meeting is adjourned to the same time and place in the following week or, if that is not a business day, to the same time on the next following business day.

(2) Subject to sub-rule (3), unless those persons present, in person or by proxy, pass a resolution to the contrary, the chairman may adjourn a creditors' meeting.

(3) The chairman of a creditors' meeting may not adjourn or further adjourn a meeting under sub-rule (2) to a date more than fourteen days after the date fixed for the original meeting.

Chairman as proxy-holder

277. (1) The chairman shall not by virtue of any proxy he holds, vote on a resolution concerning the remuneration or expenses of the office holder unless the proxy specifically directs him to vote in that way.

(2) If the chairman uses a proxy contrary to sub-rule (1), his vote with that proxy does not count towards any majority under this rule.

(3) When the chairman holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution—

(a) he shall propose it himself, unless he considers that there is good reason for not doing so; and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why he did not propose it.

Quorum

278. (1) The quorum for a meeting of creditors is at least one creditor entitled to vote.

(2) A creditor shall be counted towards the quorum for the purposes of sub-rule (1) if he is present or represented by proxy by any person, including the chairman.

(3) If at any meeting of creditors—

(a) a quorum is present by the attendance of the chairman alone or by the chairman together with one additional creditor; and

(b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote,

the meeting shall not commence until at least 15 minutes after the time set for its commencement.

Entitlement to vote

279. (1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12 noon on the business day before the day fixed for the meeting—

(a) he has given written notice of his claim to the office holder and the claim is admitted in accordance with rule 283; and

(b) any proxy that he intends to be used on his behalf has been lodged with the office holder.

(2) The office holder may accept a proxy that has been sent to him by facsimile transmission as lodged for the purposes of sub-rule (1)*(b)*.

(3) The chairman of a creditors' meeting may allow a creditor to vote, notwithstanding that he has failed to comply with sub-rule (1)*(a)*, if he is satisfied that the failure was due to circumstances beyond the creditor's control.

(4) The votes of a creditor are calculated—

(a) when the creditors' meeting is in respect of a company that is in liquidation, on the value of the creditor's claim made in accordance with the provisions of the Ordinance and the Rules that relate to a claim in a liquidation;

(b) if the creditors' meeting is in respect of a bankruptcy, on the value of the creditor's claim made in accordance with the provisions of the Ordinance and the Rules that relate to a claim in a bankruptcy;

(c) in any other case, according to the amount of the creditor's debt as at the relevant date, deducting any amounts paid in respect of the debt after that date.

(5) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except when the chairman agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

Resolutions and requisite majorities

280. (1) Unless the Ordinance or the Rules provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50% in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.

(3) If a resolution is proposed which affects a person in respect of his remuneration or conduct as an office holder, or as a proposed or former office holder, the vote of that person and of any partner or employee of his, shall not be counted in the majority required for passing the resolution.

(4) Sub-rule (3) applies with respect to a vote given by a person whether personally, on his behalf by a proxy holder or as a proxy-holder for a creditor.

(5) If a creditor abstains from voting on a resolution at a creditors' meeting, the creditor is considered not to have voted on the resolution.

Secured creditors and holders of negotiable instruments

281. (1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security interest as estimated by him.

(2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made, or in the case of a company, which has not gone into liquidation, as a security in his hands;

(b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his claim,

and the chairman decides to admit the reduced claim for voting purposes.

Hire purchase, conditional sale and chattel leasing agreements

282. (1) This rule does not apply to a creditors' meeting held in respect of a company that is in liquidation or in respect of a bankruptcy.

(2) Subject to sub-rule (3), an owner of goods under a hire purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt owed by the debtor to him on the relevant date.

(3) In calculating the amount of a debt for the purposes of sub-rule (1), no account is taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the relevant insolvency proceeding or any order made in, or matter arising in consequence of, the proceeding.

Admission and rejection of claims

283. (1) Subject to sub-rule (5), the chairman of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman of a creditors' meeting may require a creditor to produce any document or other evidence when he considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.

(4) If the chairman of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he shall mark the claim as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(5) When a creditor's claim in a liquidation or bankruptcy has been admitted by the liquidator or trustee, under section 209 or section 376 of the Ordinance, as the case may be, the Chairman shall admit the claim in the same amount for the purposes of voting.

Appeals

284. (1) A creditor may appeal to the Court against any decision of an office holder, or the chairman of a creditors' meeting, under rules 279 or 283.

(2) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the Court may order another meeting to be summoned, or make such order as it thinks just.

(3) The Court's power to make an order under this sub-rule is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

(4) An appeal under this rule shall be made within a period of twenty-eight days from the date of the decision in respect of which the appeal is made.

(5) If, in the case of an appeal against the chairman of a creditors' meeting, the Court reverses or varies the Chairman's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.

(6) Neither an office holder, nor any person nominated to chair a creditors' meeting on his behalf in accordance with rule 274(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

Minutes

285. (1) The chairman of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he authenticates the minutes.

(2) Minutes kept under sub-rule (1) shall include a list of the creditors who attended the meeting, whether in person or by proxy, the resolutions passed at the meeting and, if a creditors' committee is established, the names and addresses of those persons elected to be members of the committee.

(3) Minutes kept in accordance with this rule shall be retained as a record in the insolvency proceeding.

Members meetings

286. (1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside the Islands.

(2) Rules 274, 276(1), 278(2) and 278(3) apply to members' meetings with necessary modifications.

(3) The quorum for a meeting of members is—

(a) when the company only has one member or only has one member entitled to vote, that member; or

(b) when the company has more than one member entitled to vote, at least 2 members of those members.

(4) Subject to this rule, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Ordinance.

(5) When a company is in administration, the chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

Interpretation for rules 288 to 294

287. (1) In rules 288 to 294—

"meeting" means a meeting of creditors or of members required or permitted to be held under the Ordinance or the Rules;

"principal" means the person giving a proxy; and

"proxy-holder" means the person to whom the principal gives his proxy.

(2) For the purposes of the Ordinance and the Rules, a proxy is an authority given by a principal to a proxy-holder to attend a meeting and to speak and vote as his representative.

General provisions concerning proxies

288. (1) Subject to sub-rule (2), a person who desires to be represented at a creditors' meeting may give one proxy to an individual aged eighteen years or over.

(2) Notwithstanding sub-rule (1)—

(a) a principal may specify one or more other individuals aged eighteen years or over to be proxy-holder in the alternative, in the order in which they are named in the proxy; and

(b) a proxy for a particular meeting may be given to the chairman of the meeting who cannot decline to act as proxy-holder in such circumstances.

(3) A proxy requires the holder, either as directed or in accordance with the holder's discretion—

(a) to give the principal's vote on matters arising for determination at the meeting;

(b) to abstain; or

(c) to propose, in the principal's name, a resolution to be voted on by the meeting.

Issue and use of proxy forms

289. (1) A proxy form sent with a notice of a meeting shall not have inserted in it the name or description of any person.

(2) A proxy form shall not be used at a meeting unless it is in the same, or a substantially similar, form as the proxy form sent out with the notice calling the meeting.

(3) A proxy form shall be signed by the principal, or by some person authorised by him, either generally or with reference to a particular meeting.

(4) If a proxy form is signed by a person other than the principal, the nature of the person's authority shall be stated.

Use of proxies at meetings

290. (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) When the Official Assignee holds proxies for use at a meeting, his deputy, or such other of his officers as he may authorise in writing, may act as proxy-holder in his place.

(3) When an insolvency practitioner holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, the other person may use the insolvency practitioner's proxies as if he were himself the proxy-holder.

(4) If a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as an officer holder, the proxy-holder may, unless the proxy states otherwise, vote for or against, as he thinks fit, any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(6) If a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

291. (1) Subject to sub-rule (2), proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) When the chairman is not the responsible insolvency practitioner, he shall deliver the proxies, immediately after the meeting, to the responsible insolvency practitioner who shall retain them.

(3) Proxies shall be retained as records in the insolvency proceeding.

Right of inspection

292. (1) The responsible insolvency practitioner shall allow proxies retained by him to be inspected, at all reasonable times on any business day, by—

(a) any creditor, in the case of proxies used at a meeting of creditors; and

(b) a member, in the case of proxies used at a meeting of the company or of its members.

(2) Subject to sub-rule (3), the reference in sub-rule (1) to a creditor is—

(a) in the case of a liquidation or a bankruptcy, a creditor who has submitted a claim under section 209 or 376 of the Ordinance; and

(b) in any other case, a person who has submitted a claim, in writing, to be a creditor of the company or individual concerned.

(3) The reference in sub-rule (1) to a creditor does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(4) The right of inspection given by this rule is also exercisable—

(a) in the case of an insolvent company, by a director; and

(b) in the case of an insolvent individual, by him.

(5) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting.

Proxy-holder with financial interest

293. (1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

(2) When a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in sub-rule (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under rule **290** and in its application to him, the proxy-holder is deemed an associate of his.

Company representation

294. (1) When a person is authorised under the Companies Ordinance to represent a company at a meeting of creditors or of the company or its members, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution shall be under the seal of the company or certified by the secretary or a director of the company to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

Interpretation for rules 296 to 305

295. (1) In rules 296 to 305—

"committee" means a creditors' committee established under section 457 of the Ordinance; and

"meeting" means a meeting of the committee.

(2) When the context permits, references in the Ordinance or the Rules to a "member" shall include a member's representative.

Committee may establish own procedures

296. (1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Ordinance or this Part.

(2) Without limiting sub-rule (1), the committee may agree procedures for—

(a) the participation by members in meetings by telephone or other electronic means; and

(b) the passing of circular resolutions.

Meetings

297. (1) Subject to sub-rule (2), meetings—

(a) may be held at such venues as the committee may resolve; and

(b) may be called by a member of the committee or by the office holder.

(2) If a meeting has not already been held, the office holder shall call a first meeting to be held not less than twenty-eight days after the committee's establishment.

(3) The person convening a meeting shall give seven days' written notice of the venue of the meeting to each member of the committee and to the office holder.

(4) Notwithstanding sub-rule (3), a member of the committee may, before or at the meeting, waive his entitlement to notice under that sub-rule.

Chairman of meetings

298. (1) Subject to sub-rule (2), every meeting of the creditors' committee shall be chaired by the relevant office holder.

(2) When the office holder is unable to attend the meeting, he may nominate as chairman—

(a) an eligible insolvency practitioner; or

(b) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters.

(3) If a meeting of the creditors' committee is to be held outside the Islands and the insolvency practitioner will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chairman.

(4) If a meeting of the creditors' committee is held pursuant to a notice issued by the committee under section 459(2) of the Ordinance, the members of the creditors' committee may elect one of the members of the committee to be chairman of the meeting in place of the office holder or his nominee.

Quorum and resolutions

299. (1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.

(2) At a meeting of the committee, each member has one vote and a resolution is passed by a simple majority of those members who are present and vote.

(3) A resolution shall be recorded in writing, signed by the chairman and retained as a record in the insolvency proceeding.

Committee members' representatives

300. (1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee member's representative shall hold a letter of authority entitling him so to act, either generally or specially, and signed by or on behalf of the committee member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No committee member may be represented by a body corporate, a person who is an undischarged bankrupt, a person who is a disqualified person within the meaning of section 280(4) of the Ordinance or a person who is a restricted person within the meaning of the Ordinance.

(5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.

(6) When a member's representative signs any document on the member's behalf, the fact that he so signs shall be stated below his signature.

Written resolutions

301. (1) The office holder may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the office holder and the committee member.

(2) A notice sent to a member under sub-rule (1) shall be set out so as to enable the committee member to signify his dissent or agreement to each separate resolution on which the office holder seeks agreement.

(3) Any member of the committee may, within seven days of a notice being sent out under sub-rule (1), require the office holder to call a meeting of the creditors' committee to consider the matters raised by the resolution.

(4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the office holder is notified in writing by a majority of the committee members that they agree with it.

(5) A resolution passed under this rule shall be treated as a resolution passed at a meeting of the creditors' committee.

(6) Without limiting sub-rule (1), written notice may be given by post, fax or e-mail.

Cooperation by office holder with committee

302. Without limiting section 459(2)*(b)* of the Ordinance, a requirement of the committee under that section to provide it with reports or information is not reasonable if the office holder considers that—

(a) the requirement is frivolous or unreasonable;

(b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;

(c) the company or bankrupt does not have sufficient funds to enable him to comply with the requirement.

Termination of insolvency proceeding

303. (1) Subject to sub-rule (2), the creditors' committee ceases to exist on the termination of the insolvency proceeding in which it was appointed.

(2) If, on discharging an administration order, the Court makes an order for the appointment of a liquidator under section 72(1)*(a)* of the Ordinance, unless the Court otherwise orders, any creditors' committee appointed in the administration continues as if appointed in the liquidation.

Expenses of members

304. (1) Subject to sub-rule (2), the office holder shall, out of the assets of the company or bankrupt, defray, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the insolvency.

(2) Sub-rule (1) does not apply to any meeting of the committee held within six weeks of a previous meeting, unless the meeting in question is summoned at the instance of the office holder.

Written resolutions

305. (1) The office holder may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

(2) A notice under sub-rule (1) shall specify the time and date by which votes on the resolution shall be received by him and a vote shall be counted if—

(a) the vote is received by the office holder by the time and date specified in the notice; and

(b) the vote is accompanied by a completed statement of entitlement to vote.

(3) If any votes are received without the statement as to entitlement to vote, or the office holder decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.

(4) The closing date for receipt of votes shall be set at the discretion of the office holder but shall not be set less than fourteen days from the date of issue of the notice under sub-rule (1).

(5) When an office holder sends out a notice under sub-rule (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with sub-rule (6) by—

(a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or

(b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.

(6) A meeting is requisitioned under sub-rule (5) by sending a notice to the office holder within seven days after the date that the notices under sub-rule (1) are sent out.

(7) If the resolution proposed in the notice is rejected by the creditors or members, the office holder may call a meeting of creditors or members, as the case may be.

(8) A reference in the Ordinance or the Rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this rule.

Advertisements

306. (1) Without limiting any specific requirement to advertise contained in the Ordinance or the Rules, when a person is required by the Ordinance or the Rules to advertise any application, order, notice or other document or matter, he shall, within the time specified in the Ordinance or the Rules—

(a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Gazette Office for advertisement; and

(b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company or individual who is subject to the insolvency proceeding concerned.

(2) The first meeting of creditors in an administration or a liquidation and the notice referred to in section 144(2)(c) of the Ordinance shall be advertised in the same newspaper as that in which, as the case may be, the notice of the administration order, the appointment of the liquidator or the appointment of the administrative receiver was advertised.

(3) When sub-rule (2) applies, the administrator, liquidator or administrative receiver may also advertise in such other newspaper as he thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

Filing of documents with the Registrar of Companies

307. (1) When a document is required or permitted under the Ordinance or the Rules to be filed with the Registrar of Companies, the document is filed by delivering or posting it to the Registrar.

(2) A document is filed with the Registrar of Companies on the day when it is received at the Companies Registry or, if it is received at a time when the Companies Registry is closed, on the next day on which the Companies Registry is open.

Insolvency practitioner's consent to act

308. (1) For the purposes of section 19(1)*(b)* of the Ordinance, the written consent of an insolvency practitioner shall specify the appointment to which it relates.

(2) The written consent of an insolvency practitioner shall—

(a) when the appointment is to be made by the Court, specify the date of the hearing for which it is provided;

(b) when the appointment is to be made by the members of a company, specify that the consent is valid only for a meeting of the members to be held on a date specified in the consent, or at any adjournment of the meeting,

and, in either case shall state the period of time for which the consent is valid which shall not exceed six weeks.

Remuneration

309. (1) When an administrator, liquidator or bankruptcy trustee sells assets on behalf of a secured creditor, he is entitled to be paid out of the assets reasonable remuneration fixed in accordance with the general principles contained in section 464 of the Ordinance.

(2) If the administrator, liquidator or bankruptcy trustee cannot agree his remuneration with the secured creditor, he may apply to the Court to fix the remuneration and the Court shall fix the remuneration in accordance with the general principles contained in section 464 of the Ordinance.

(3) When insolvency practitioners are appointed jointly, the remuneration shall be apportioned as agreed between them.

(4) If jointly appointed insolvency practitioners cannot agree how the remuneration should be apportioned between them, the matter may be referred for decision to the Court, to the creditors' committee, if any, or to a meeting of creditors.

(5) If the insolvency practitioner is a legal practitioner and employs his own firm, or any partner in it, to act in or in connection with the insolvency proceeding in respect of which he is appointed, profit costs shall not be paid unless authorised by the creditors' committee or the Court.

Payments into Insolvency Surplus Account

310. (1) Immediately after the completion of a liquidation or a bankruptcy, the liquidator or bankruptcy trustee shall pay all monies representing unclaimed assets of the company or the bankrupt to the Permanent Secretary, Finance for payment into the Insolvency Surplus Account.

(2) A supervisor of a company arrangement or personal insolvency agreement, an administrator or a receiver may at any time apply to the Court for an order permitting him to pay any monies that he holds with respect to the arrangement or insolvency agreement, administration or receivership that represent unclaimed assets to the Permanent Secretary, Finance for payment into the Insolvency Services Account.

(3) The Court shall not make an order under sub-rule (2) unless the Permanent Secretary, Finance has been given notice of the hearing.

(4) A liquidator, bankruptcy trustee, supervisor, administrator or receiver paying money to the Permanent Secretary, Finance under sub-rule (1), or pursuant to an order of the Court under sub-rule (2), shall provide the Permanent Secretary, Finance with such information, documentation and explanations regarding the monies, the assets which they represent and the claims or potential claims that have or may be made in respect of the monies as the Permanent Secretary, Finance may require.

Investment of monies in Insolvency Surplus Account

311. (1) The Permanent Secretary, Finance may invest monies standing to the credit of the Insolvency Account—

(a) in one or more deposit or other interest bearing accounts with a reputable bank or banks licensed and operating in the Islands; and

(b) in such investments as may be approved by the Cabinet for that purpose.

(2) Any interest received on monies standing to the credit of the Insolvency Account or interest or income received in respect of investments made in accordance with sub-rule (1) shall be payable to the Government and any claimant of monies paid into the Insolvency Surplus Account shall not be entitled to make any claim in respect of such interest or income.

Payments out of the Insolvency Surplus Account

312. (1) The Permanent Secretary, Finance shall, subject to such conditions as it may reasonably impose, pay or distribute monies from the fund to any person that it is satisfied is entitled to claim those monies under, or in respect of, the insolvency proceeding in respect of which the monies were paid into the Insolvency Surplus Account.

(2) The Permanent Secretary, Finance shall keep accounts of the monies in the Insolvency Surplus Account, including those monies that are invested in accordance with rule 311(1), identifying the insolvency proceeding to which each receipt and payment relates and showing the balance remaining in respect of each insolvency proceeding.

(3) Any monies standing to the credit of the Insolvency Surplus Account twenty years after they were paid into the account, shall, provided that there is no outstanding claim in respect of those monies, be paid to and become the property of the Government and no person shall thereafter be entitled to make any claim to those monies.

PART XI

COURT PROCEDURE AND PRACTICE

Application of Court Rules

313. Except so far as inconsistent with the Ordinance or the Rules or a practice direction issued under rule 316, the Court Rules apply to insolvency proceedings, with any necessary modifications.

Filing of documents with the Court

314. Every document filed with the Court shall have endorsed upon it the date and time at which it was filed and, if the Rules so provide, shall be sealed.

Filing of documents with the Court in approved electronic form

315. (1) When the Rules permit a document to be filed with the Court in approved electronic form, the document may be filed by—

(a) faxing the document to the fax number designated by the Court for the purpose; or

(b) sending it as an attachment to an e-mail to the e-mail address designated by the Court for the purpose.

(2) Subject to the Rules, the filing of a document in accordance with this rule shall have the same effect for all purposes as a document filed in paper form.

(3) A person filing a document in approved electronic form shall ensure that—

(a) if the document is faxed, a fax transmission report detailing the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the document; or

(b) if the document is sent as an e-mail attachment, a hard copy of the e-mail is created detailing the time and date of the e-mail and the address to which it was sent and containing a copy of the document sent as an attachment,

and, the fax transmission report or the hard copy of the e-mail is retained.

(4) The copy of the faxed document or the hard copy of the e-mail attachment shall be sent as soon as reasonably practicable to the Court, to be placed on the Court file.

(5) A person filing a document in approved electronic form shall take three copies of the faxed document or the hard copy required by sub-rule (3)*(b)* and any additional supporting documents required by the Rules to the Court on the next day that the Court is open for business.

Practice Directions

316. (1) The Chief Justice may issue a practice direction when required or permitted by the Ordinance or the Rules.

(2) When there is no express provision in the Ordinance or the Rules for such a direction, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

(3) In the case of any inconsistency between a practice direction issued under this rule and the Court Rules, the practice direction issued under this rule prevails.

(4) A practice direction issued under this rule—

(a) shall be published in the *Gazette*; and

(b) comes into effect on its publication in the *Gazette* or on such later date as may be specified in the direction.

Compliance with practice directions

317. Unless there are good reasons for not doing so, a party shall comply with any practice directions issued under rule 316.

Practice guides

318. (1) The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.

(2) Parties shall have regard to any relevant practice guide.

(3) The Court may take account of any failure of a party to comply with any relevant practice guide when considering any order for costs.

SCHEDULE

PREFERENTIAL CLAIMS

1. In this Schedule—

"debtor" means—

(a) in the case of a liquidation, the company in liquidation; or

(b) in the case of a bankruptcy, the bankrupt.

"relevant date" means the commencement of the liquidation or the bankruptcy, as the case may be.

2. For the purposes of section 2(1), the claims set out in column 1 of the table below are preferential debts up to the maximum amount specified in column 2 of the table or up to an unlimited amount when specified in column 2.

	Nature of claim	**Maximum amount of claim to be regarded as preferential**
(1)	The amount due to a person as a present or past employee of the debtor that represents— *(a)* wages and salary, including commission and any amount payable by way of allowance or reimbursement, due in respect of the whole or any part of the period of four months immediately prior to the relevant date; or *(b)* accrued holiday pay in respect of any period of employment before the relevant date, whether the employee's contract of employment was terminated before or after the relevant date.	$20,000
(2)	Any sum due and payable by the debtor on behalf of an employee in respect of medical health insurance premiums or pension contributions.	$20,000
(3)	Any sum due by the debtor to the National Insurance Board in respect of— (a) employees′ contributions deducted from employees; (b) in respect of employer′s contributions payable for the 6 months immediately	No limit

before the relevant date.

(4)	Sums due to the Government in respect of any tax, duty, including stamp duty, licence fee or permit.	$40,000
(5)	Sums due to the Commission in respect of any fee or penalty.	$20,000

3. Preferential claims rank equally between themselves and, if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

INSOLVENCY PRACTITIONERS REGULATIONS

ARRANGEMENT OF REGULATIONS

INSOLVENCY PRACTITIONERS REGULATIONS – SECTION 20

(Legal Notice 15/2019)

Commencement

[1 April 2019]

Citation

1. These Regulations may be cited as the Insolvency Practitioners Regulations.

Interpretation

2. In these Regulations—

"Code" means the Insolvency Practitioners Code issued under section 21(1) of the Ordinance; and

"licence" means a licence to act as an insolvency practitioner issued under section 13 of the Ordinance.

Application for licence

3. (1) An application for a licence shall be accompanied by—

(a) evidence that the applicant is resident in the Islands and entitled or permitted to work in the Islands;

(b) the applicant's curriculum vitae, providing details of the applicant's qualifications and career history;

(c) evidence of any qualifications that the applicant holds which are relevant to the application;

(d) a personal declaration demonstrating how the applicant satisfies the Commission's fit and proper criteria;

(e) written confirmation from the firm or employer of the applicant that the firm or employer complies with the minimum security requirements, including insurance cover, specified in the Code; and

(f) such other information and documents as may be specified in the Code.

(2) The Commission may require any documents and information provided in support of an application to be verified in such manner as it may specify.

(3) The Code may specify the form in which particular documents and information are to be provided.

(4) If, before the determination by the Commission of an application—

(a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or

(b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall as soon as reasonably practicable, give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

(5) An applicant who fails to comply with subregulation (4) commits an offence and is liable on summary conviction to a fine of $25,000.

Issuance of licence

4. The Commission shall not grant a licence to an applicant unless it is satisfied that the applicant—

(a) satisfies the licensing criteria specified in the Code; and

(b) will be able to comply with any terms or conditions that the Commission intends to impose under section 13(3) of the Ordinance.

Returns

5. (1) The Commission shall approve forms of return to be submitted to it by licensed insolvency practitioners, or specific types or classes of insolvency practitioner.

(2) For the purposes of section 479(1) of the Ordinance, the prescribed manner of publication is on the Commission's website.

Fees

6. The following fees are payable to the Commission—

(a) for an application for a licence, $500;

(b) by a licensed insolvency practitioner—

(i) upon the issue of the licence to the licensed insolvency practitioner, $2,000; and

(ii) on each subsequent anniversary of the issue of the licence to the licensed insolvency practitioner, $2,000.

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INSOLVENCY (TRANSITIONAL PROVISIONS) REGULATIONS - SECTION 481

(Legal Notice 16/2019)

Commencement

[1 April 2019]

Citation

1. These Regulations may be cited as the Insolvency (Transitional Provisions) Regulations.

Interpretation

2. In these Regulations "former Ordinance" means the Companies Ordinance 1981.

Company arrangements

3. Part III of the Ordinance applies to, and in relation to, a company being wound up under the former Ordinance as if the following amendments had effect—

(a) a reference in Part III of the Ordinance to—

(i) a company "in liquidation" includes a company being wound up under the former Ordinance;

(ii) "liquidation" includes a liquidation under the former Ordinance; and

(iii) "liquidator" includes a liquidator appointed under or in accordance with the former Ordinance;

(b) "preferential creditor" means a creditor who would have been a preferential creditor under the former Ordinance and the preferential claim of the preferential creditor shall be quantified in accordance with that Ordinance;

(c) section 28(1)*(a)* of the Ordinance does not apply to the liquidator of a company being wound up under the former Ordinance unless the liquidator is an eligible insolvency practitioner; and

(d) in section 41(3)*(a)* of the Ordinance, the commencement of the liquidation of the company being wound up under the former Ordinance shall be determined in accordance with that Ordinance.

Administration

4. (1) For the purposes of sections 60 and 56(2)*(b)* of the Ordinance, a receiver who, if he had been appointed after 1 January 2019, would have been an administrative receiver, is deemed to be an administrative receiver.

(2) For the purposes of sections 60 of the Ordinance—

"company in liquidation" includes a company being wound up under the former Ordinance; and

"provisional liquidator" includes an Official liquidator appointed provisionally under the former Ordinance.

(3) The liquidator of a company being wound up under the former Ordinance may apply to the Court for the appointment of an administrator under section 64(1)*(f)* of the Ordinance.

(4) The Court shall not make an administration order in respect of a company being wound up under the former Ordinance except on the application of the liquidator.

Receivership

5. Part V of the Ordinance does not apply to a receiver or manager of a company's property appointed prior to 1 January 2019 and the former law applicable to receivers and managers continues to apply.

Voidable transactions

6. The Court may make an order under section 263 of the Ordinance in respect of a transaction entered into or a floating charge created prior to 1 January 2019, but only to the extent that it could have made such an order under the former Ordinance.

Offences

7. A person does not commit an offence under section 273, 274, 274, 275, 276, 277 or 278 of the Ordinance in respect of any act or omission prior to 1 January 2019.

Insolvency practitioner appointed prior to 1 January 2019

8. Section 11(2) of the Ordinance does not apply to a person who acts as an insolvency practitioner by virtue of an appointment made prior to 1 January 2019.