

TURKS AND CAICOS ISLANDS

INSOLVENCY (AMENDMENT) BILL 2020

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TURKS AND CAICOS ISLANDS
INSOLVENCY (AMENDMENT) BILL 2020

AN ORDINANCE TO AMEND THE INSOLVENCY ORDINANCE 2017
AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

Short title and commencement

1. This Ordinance may be cited as the Insolvency (Amendment) Ordinance 2020 and shall come into force on (date).

Interpretation

2. In this Ordinance, “principal Ordinance” means the Insolvency Ordinance 2017.

Section 2 amended

3. Section 2 of the principal Ordinance is amended—

(a) in the definition of administrator, by inserting after “company in administration”, the words “, under Part IV”;

(b) by deleting the definition of “insolvency proceeding” and substituting the following definition—

““insolvency proceeding” means—

- (a) a company arrangement;
- (b) the administration of a company under Part IV;
- (c) the receivership of a company under Part V;
- (d) the liquidation of a company or an unregistered company under Part VII;
- (e) a personal insolvency agreement;
- (f) the bankruptcy of an individual under Part XII; and
- (g) a prescribed procedure or proceeding;”;

(c) by inserting the following definition after the definition of “insolvent”—

““interim receiver” means the interim receiver of an individual appointed under section 341;”;

and

(d) by deleting the definition of “liquidator” and substituting the following definition—

““liquidator” means—

(a) the liquidator of a company appointed under section 159 or section 170; or

(b) the liquidator of an unregistered company appointed under section 237”.

Section 6 amended

4. Section 6 of the principal Ordinance is amended by deleting the section heading and substituting “**Definitions relating to the duration of certain types of insolvency proceeding**”.

Section 9 amended

5. Section 9 of the principal Ordinance is amended in subsection (4) by deleting “insolvency proceedings before the Court” and substituting “any insolvency proceeding before the Court, whether or not a party to the proceeding”.

Section 11 amended

6. Section 11 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

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

(a) the supervisor of a company arrangement approved in accordance with Part III or the supervisor of a personal insolvency agreement approved in accordance with Part XI;

(b) the interim supervisor under a proposal for a company arrangement made under Part III or for a personal insolvency agreement made under Part XI;

(c) the administrator of a company appointed under Part IV;

(d) the administrative receiver of a company;

- (e) the liquidator of a company appointed under section 159 or section 170 or the provisional liquidator of a company appointed under section 171;
- (f) the liquidator of an unregistered company appointed under section 237;
- (g) the interim receiver of an individual appointed under section 341; or
- (h) the bankruptcy trustee of an individual appointed under Part XII.

Section 14 amended

7. Section 14 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

“(1) A licensed insolvency practitioner or former licensed insolvency practitioner shall, on being given reasonable notice by the Commission, produce to the Commission for inspection—

- (a) his records and accounts with respect to any matter in which he acts or has acted as an insolvency practitioner;
- (b) any reports that the licensed insolvency practitioner has prepared in respect of any matter in which he acts or has acted as an insolvency practitioner.”.

Section 21 amended

8. Section 21(3)(a) of the principal Ordinance is amended by deleting “practitioner or insolvency proceeding” and substituting “practitioner, insolvency proceeding or matter”.

Section 109 amended

9. Section 109(1)(d) of the principal Ordinance is amended by deleting “, in an insolvency proceeding.”.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insolvency Ordinance 2017 (“the Ordinance”) with the principal objective of clarifying two matters on which there is some uncertainty. The opportunity has been taken to clarify the intent of certain other sections of the Ordinance.

The intention of the Ordinance, as enacted, is that all insolvency practitioners appointed and acting under the Insolvency Ordinance should be licensed, regulated and supervised by the Financial Services Commission. This includes a person appointed by the Court as liquidator of an unregistered company (which covers a foreign company) under section 237 of the Ordinance.

It would be impracticable for the Turks and Caicos Islands to seek to licence, regulate and supervise insolvency practitioners appointed in foreign insolvency proceedings, even if the insolvent company, entity or person has assets in, or some other connection with, the Turks and Caicos Islands. Firstly, this would subject a foreign insolvency practitioner to two different licensing and regulatory regimes. Secondly, it would be extremely difficult and costly, if not impossible, for the Financial Services Commission, as supervisor, to effectively supervise a foreign insolvency practitioner based in another jurisdiction.

The second matter concerns the definition of “insolvency proceeding” which has been construed in the narrowest of senses as excluding the liquidator of a company appointed by its members.

Clause 3 amends the definitions of “administrator”, “interim receiver” and “liquidator”, in each case to ensure that they must be interpreted solely as applying to an administrator, interim receiver and liquidator appointed under the Ordinance.

Clause 3 also amends the definition of “insolvency proceeding” to specify every type of proceeding under the Ordinance that is regarded as an insolvency proceeding for the purposes of the Ordinance. To provide flexibility, the new definition enables further types of proceeding to be prescribed by the Insolvency Rules. This removes any ambiguity from the definition.

Clause 4 is a consequential amendment. It amends the heading to section 6 to make it clear that section 6 applies only to certain types of insolvency proceeding, not all insolvency proceedings.

Clause 5 amends section 9(4) of the Ordinance, which provides the Official Assignee with a right of audience in insolvency proceedings before the Court. To avoid possible future uncertainty, clause 5 clarifies that the Official Assignee has a right of audience, whether or not a party to the insolvency proceedings.

Clause 6 amends section 11, which defines when a person acts as an insolvency practitioner, to clarify that a person acts as an insolvency practitioner only when acting under the Ordinance. This is intended to ensure that a person appointed in foreign insolvency proceedings cannot be construed as acting an insolvency practitioner for the purposes of the Ordinance.

Clause 7 amends section 14(1) of the Ordinance to impose a clearer obligation on a licensed insolvency practitioner to provide records and accounts to the Official Assignee, when requested to do so.

Clauses 8 and 9 make amendments consequential on the clarification of the meaning of “insolvency proceeding”.

Clause 10 amends section 249(1) of the Ordinance to ensure that an order of limited disclosure can be made with respect to a statement of affairs from the point at which it is prepared. The wording as enacted requires the statement of affairs to be submitted to the Official Assignee before the order for limited disclosure can be made.

Clauses 11 and 12 also make amendments consequential on the clarification of the meaning of “insolvency proceeding”.